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VOL. II.

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SELDEN'S TABLE TALK.
SIR W. BLACKSTONE'S ANALYSIS
OF THE
LAWS OF ENGLAND.

LONDON:
PUBLISHED BY JOHN SHARPE,
PICCADILLY.

1819—21.

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LONDON, PUBLISHED BY JOHN SHARPE, PICCADILLY.

1821.

BIOGRAPHICAL PREFACE.

NOTHING can be more interesting than this little book, containing a lively picture of the opinions and conversation of one of the most eminent scholars and most distinguished patriots England has produced, living at a period the most eventful of our history: there are few volumes of its size so pregnant with sense, combined with the most profound learning: it is impossible to open it, without finding some important fact or discussion, something practically useful and applicable to the business of life: it may be said of it, as of that exquisite little manual, lord Bacon's Essays, "after the twentieth perusal one seldom fails to remark in it something overlooked before."

Dr. Wilkins, the editor of Selden's works, has attempted to discredit the authenticity of the 'Table Talk,' upon the ground of its containing many things unworthy of a man of Selden's erudition, and at variance with his principles and practice: but this objection is far from conclusive, and the compilation has such a complete and unaffected air of genuineness, that we have no hesitation in giving credit to the assertion of Richard Milward, Selden's amanuensis, who says that it was faithfully committed to writing, from time to time, during the long period of twenty years, in which he enjoyed the opportunity of daily hearing his discourse, and of recording the excellent things that usually fell from him: he appeals to the executors and friends of Selden, that such was the usual manner of his patron's conversation; and this dedicatory appeal to them is no slight testimonial of the veracity of his assertion.

It is true, that the familiar, and sometimes coarse manner in which many of the subjects discussed are illustrated,

is not such as might have been expected from a profound scholar; but Selden, with all his learning, was a man of the world, familiar with the ordinary scenes of common life, and knew how to bring abstruse subjects home to the business and bosoms of men of ordinary capacity, in a manner at once perspicuous and agreeable.

It is remarkable, that the style of Selden, in those English compositions published during his life, appears harsh and obscure; but lord Clarendon, who knew him well, tells us, "that he was a clear discourser, and possessed the faculty of making difficult things easy, and presenting them clearly to the understanding." This faculty is every where apparent in the following pages, which are replete with the fruits of his varied and extensive erudition, illustrated in the most plain, and sometimes in the happiest manner, by familiar parallels, without pedantry, and without pretension. In preparing the present edition for the press, the text of the first edition, printed in 4to. London, 1689, under the care of Richard Milward, has been scrupulously followed, the orthography alone having been reformed.

Selden was born at Salvington, an obscure village on the coast of Sussex, near Terring, and not far from Worthing, on the 16th of December, 1584: his father was a substantial yeoman, and had very much bettered his condition by marriage with the only daughter of Thomas Baker, of Rushington, descended from an ancient and knightly family of that name: it was his skill in music which obtained him his wife, who was mother to this "great dictator of learning, and glory of the English nation." Selden received the rudiments of education at the free school of Chichester, and was from thence, at the age of sixteen, sent to the university of Oxford, and entered of Hart Hall, under the tuition of Anthony Barker, a relation of his master at Chichester school. His progress at college was more than usually rapid; and he left it with a high reputation in about four years, to pursue the study of the law in the Inner Temple, where he was admitted in May, 1604. He became so sedulous a student, and his proficiency so well known, that he was soon in very extensive practice as a chamber counsel; but he does not seem to have appeared frequently at the bar. His devotion to his profession did not prevent him

from pursuing his literary occupations with assiduity; and, at the early age of twenty-two, he had completed his 'Dissertation on the Civil Government of Britain before the Norman Conquest.'*

This work is an astonishing performance, considering the age at which it was composed. In 1610, we find him pursuing the same course of study, the fruits of which were given to the world, under the titles of 'Jani Anglorum Facies Altera,' 'England's Epinomis,' and 'The Duello, or Single Combat.' These publications were in a measure connected with the studies incident to his profession; but in 1612, was put forth his elaborate and interesting commentary on the first twelve books of the Polyolbion; he must, therefore, have been indefatigable in his pursuit of knowledge through every channel, and in all its various ramifications. His intense application appears to have very materially injured his health; for in the dedication of his 'Titles of Honour,' published in 1614, to his friend, Mr. Edward Heyward, he says, "Some year since it was finished, wanting only, in some parts, my last hand—which was then prevented by my dangerous and tedious sicknesse." From this attack he recovered, by the skill and care of Dr. Robert Floyd, returning to his studies with fresh zest, and renewed vigour; "and thus," says he, "I employed the breathing times which, from the so different studies of my profession, were allowed me: nor hath the proverbial assertion, 'that the lady Common Law must lie alone,' ever wrought with me." His fame now rang through Europe, and his books were received and read with avidity. In the year 1617, was produced that extraordinary and profoundly erudite treatise on the Deities of the Ancient Syrians,* which he "intended as a commentary on all the passages of the Old Testament relating to the idols of the heathens, and discussing, there-

* This was not published until 1615, when it was printed at Frankfort, under the title of 'Analecton Anglo-Britannicwn.'

† 'De Diis Syris, Syntagmata Duo. London, 1617.'

fore, not only the Syrian, but the Arabian, Egyptian, Persian, African, and European idolatry."

His 'History of Tithes' was published in 1618, in which he seemed to combat the divine right of the church to them, and, consequently, gave great offence to the clergy, and incurred the displeasure of king James. He was admitted, at the intercession of his friend Ben Jonson, to explain himself to the king in person, and seemed to have conciliated him; but in a very short time he was cited before the high commission court, his book was prohibited, he was enjoined to declare his contrition for having written it, and forbid to reply to any of those who might write against it, upon pain of imprisonment. The king pointed out to him many objectionable passages, particularly one which seemed to throw a doubt upon the day of the birth of Christ; he therefore composed a short treatise upon that subject, and presented it to the king on Christmas day.*

In the preface to his 'History of Tithes,' he reproaches the clergy with ignorance and laziness, and upbraids them with having nothing to keep up their credit, but beard, title, and habit; and that their studies reached no farther than the breviary, the postills, and polyanthea: this was enough to draw down their indignation upon him, and he was consequently vehemently attacked. Wood says, that "the usage he met with sunk so deep into his stomach, that he did never after affect the bishops and clergy, or cordially approve their calling, though many ways were tried to gain him to the church's interest." He had certainly a great contempt for the ignorant and fanatic among the clergy of his day—and did not scruple to express it openly: indeed it appears he was of opinion that the state should invariably keep a rein on

* This treatise does not appear to have been printed during Selden's life, but was published in 1661, under the following title, 'ΘΕΑΝΘΡΩΠΙΟΣ, or, God made Man; proving the Nativity of our Saviour to be on the 25th of December. London: printed by J. G. for Nathaniel Brooks, at the Angel, in Cornhill, 1661,' 8vo. with a wretched portrait of Selden prefixed, engraved by I. Chantry.

the church; yet he was partial to the episcopal form of worship. Though not orthodoxal in his opinions, he was "a resolved serious Christian," as sir Matthew Hale told Baxter, "a great enemy to Hobbes's errors, and that he had seen him openly oppose Hobbes so earnestly as either to depart from him or drive him from the room."

In the year 1621, James asserted, in one of his speeches, that the privileges of parliament were original grants from the crown. Upon this occasion, Selden was consulted both by the lords and the commons; and in the opinion which he delivered, though he wholly denied the point in question, yet with the strictest integrity he did ample justice to the prerogative of the crown.

The protest made by the commons, on this occasion, was attributed to him, and the vengeance of the court followed. He was imprisoned by an order in council of the 16th of June, which directed, "that no person should be suffered to speak with him; nor should word, message, or writing be received by him; and that a gentleman of trust should be appointed to remain with him." The letter which he addressed to sir George Calvert, one of the secretaries of state, upon this occasion, is remarkable for the cool firmness which it exhibits. After being kept in confinement for five weeks, he was liberated, at the intercession of lord keeper Williams. It was during this imprisonment that he prepared for the press the curious historical work of Eadmer, a Saxon monkish writer, and illustrated it with very learned notes: upon its publication, he dedicated it in grateful terms to the lord keeper, thanking him for having been the cause of his liberation.

From this time he seems to have taken a more active part in the great political events of the period. In 1623 he was returned member for Lancaster, and in the first two years of the reign of Charles I. for Great Bedwin, in Wiltshire. He was one of the committee for forming articles of impeachment against the duke of Buckingham, and was appointed one of the managers at his proposed trial. He was one of the firmest and most distinguished opposers of the unconstitutional measure of levying money on the authority of the prerogative; and pleaded for Hampden, who had been imprisoned for refusing to pay the ship-money. It

was now that his opposition to the corruptions of the government took a decided form ; and, on all important discussions in parliament, he was looked up to, and listened to, with the greatest reverence. In consequence of the weight of his opinion with the house, and the influence of his speeches on their decisions, the government found it expedient to take measures to prevent his attendance ; and, in consequence, a charge of having uttered seditious expressions was preferred against him, and he was committed to the Tower in March, 1628. When he had been imprisoned some months, it was proposed that he should be discharged, on giving security for his future good conduct ; but this he would not accede to, and was therefore removed to the King's Bench prison. A prosecution in the star chamber was soon after commenced against him for the publication of an alleged libel : this was a work written by sir Robert Dudley, in the reign of James, under the title of ' A Proposition for his Majesty's Service, to bridle the impertinence of Parliaments.' By the favour of some powerful friends, his imprisonment was commuted for a nominal confinement in the Gatehouse, Westminster, which enabled him to retire into the country for about three months ; he was then again committed to the King's Bench, and remained there until May, 1631, when he was admitted to bail, and continued to be bailed, from term to term, till July, 1634, when he was finally discharged without trial, having repeatedly pressed for a writ of Habeas Corpus without effect. During this period, the fruits of his literary occupations were four very learned treatises on Ancient Jewish Law.

The writers of the opposite party, though they do not dare openly attack a character like that of Selden, which is invulnerable to the stings of malice, yet they insinuate that he was a rebel, and that he for some time suppressed his invaluable and celebrated treatise, ' Mare Clausum, seu de Dominio Maris,' out of pique for the affronts and persecutions he had suffered at the hands of government. There does not appear to be any foundation for this assertion ; as, before he was discharged, he took an active part in the management of the masque presented by the inns of court before the king and queen on Candlemas night, 1633 ; thus paying an agreeable compliment to them, and countenancing

the king against the calumnies of the fanatical Prynne, who had fulminated, in his *Histriomastix*, against all dramatic representations, and had particularly inveighed against court masques and revelry: this was the more marked, as Prynne was a great favourite with his party. In the year 1635, he published, at the king's express desire, his '*Mare Clausum*,' written many years before in answer to Grotius, who, in his '*Mare Liberum*,' had contended for the right of the Dutch to trade to the Indies, and to fish in the British seas. So important was the work esteemed to the interests of the kingdom, that "Sir William Beecher, one of the clerks of the council, was sent with a copy of it to the barons of the exchequer, in the open court, that it might be by them laid up as a most inestimable jewel among the choice records which concerned the crown." The court now looked upon him, "as a person worth the gaining;" he was, from this time, a frequent and welcome guest at Lambeth-house; and it was then generally believed that he might have chosen his own preferment in the state, had not his political opinions and practice remained inflexibly unchanged.

In the parliaments of 1640-1, he represented the University of Oxford, and was among the most distinguished of those in opposition to the court: he joined in the measures for the prosecution of the earl of Strafford and archbishop Laud. For this last part of his conduct he has been censured by some of his biographers, as disdaining the ties of private gratitude: it is true, he had been in habits of intimacy with the prelate; but what were the obligations he had received from him, that should make him forget what he considered his duty to his country, we are not told.

In 1642, Charles wished to have made Selden lord chancellor, but he declined it upon the plea of ill health. This overture created a suspicion that he might be tampering with the royal party, and he was even accused of being privy to the design of Waller the poet, to deliver London into the hands of the king. But Waller being questioned, "whether Selden, Pierpoint, Whitelocke, and others, were acquainted with that plot, he answered that they were not; but that he came one evening to Selden's study, where Pierpoint and Whitelocke then were with Selden, on purpose to impart it to them all; and, speaking of such a thing

in general terms, these gentlemen did so inveigh against any such thing as treachery and baseness, and that which might be the occasion of shedding much blood—that he said he durst not, for the awe and respect which he had for Selden and the rest, communicate any particulars to them, but was almost disheartened himself to proceed in it.”

Selden, when accused, denied the charge upon oath: it appears that he was, at this time, not inclined to enter into all the violent measures of his party; for though he voted against the king's commission of array, yet he strenuously supported the royal prerogative as to the militia: by this, it appears, that he was well disposed toward the just claims of the king, though determined not to shrink from his duty; and, above all, not to serve him separately from the parliament.

In 1643, he was chosen one of the lay members of the presbyterian clergy, and it is reported that he could not conceal his disgust at the ignorance and fanaticism of some of its members: two stories are current respecting his conduct in this assembly, but neither of them are worth recording. He soon after subscribed to the famous “solemn league and covenant,” and was appointed keeper of the records in the Tower. In 1645, he became one of the commissioners of the Admiralty, and the next year five thousand pounds were publicly voted him in consideration of his services and sufferings in the public cause, but with true magnanimity he declined accepting it. “While the great mass of his political compeers had been swayed by ambition, vanity, resentment, or avarice, patriotism had been the motive, and the law of the land the index of his conduct.”—“In his political opinions, he seems to have entertained a high respect for the sacredness of the social contract; and he justified the resistance to the Stuarts, on the ground that they had infringed and violated this compact between the prince and the people.” Thus far he had been active in promoting what he deemed a necessary reform in the state; but from the scenes of anarchy and confusion which followed, he retired with a clear conscience, and returned to the prosecution of his beloved studies with eagerness. At this period, he commenced a work of stupendous erudition, which he published in parts, entitled, ‘De Syne-

dris et Prefecturis veterum Hebræorum:’ he lived but to finish three books. Shortly before his death, he wrote also a preface to the ‘*Decem Scriptores Anglicanæ*,’ a Collection of Monkish Historians, published by sir R. Twysden; and a vindication of his ‘*Mare Clausum*,’ which contains some particulars of his own history. Of his works, which are very numerous, a list may be found in the *Biographia Britannica*: they were collected and published in six volumes, folio, by the learned Dr. Wilkins, in 1726.

“At length,” says Wood, “after this great light of our nation had lived to about the age of man, it was extinguished on the last of November, 1654.” He died of a gradual decline at the Carmelite, or Friary House, in White Friars, which he possessed, with other property, to a very considerable amount, by the bequest of Elizabeth, countess dowager of Kent, with whom he had lived in the strictest amity, as he had also done with the earl in his life-time. He died very rich, having lived a bachelor, in the exercise of a lucrative profession, with no disposition to expense, beyond the formation of a most extensive and valuable library, which he had once bequeathed to the University of Oxford, but revoked the legacy on account of some disgust taken at being required to give a bond as security for the loan of a manuscript: it was therefore left at the disposal of his executors, but he directed it not to be sold. They had intended bestowing it on the society of the Inner Temple, and it actually remained for five years in chambers hired for the purpose; but no preparations being made for building a room to contain it, the executors placed it at length in the Bodleian Library, where it remains, with his other collections.

He was buried, by his own direction, in the Temple church, on the south side of the round walk: his funeral was splendid, and attended by all the judges, benchers, and great officers, with a concourse of the most distinguished persons of the time.

To lord Clarendon’s delineation of his character may be added what Whitelocke says of him; “that his mind was as great as his learning, being very generous and hospitable, and a good companion, especially where he liked.” Dr. Wilkins says, “he was naturally of a serious temper, which

was somewhat soured by his sufferings ; so that he was free only with a few."

His parliamentary character has been recently most ably sketched by an anonymous writer in a periodical paper. " Selden was a member of the long parliament, and took an active and useful part in many important discussions and transactions. He appears to have been regarded somewhat in the light of a valuable piece of national property, like a museum, or great public library, resorted to, as a matter of course, and a matter of right, in all the numerous cases in which assistance was wanted from any part of the whole compass of legal and historical learning. He appeared in the national council, not so much the representative of the contemporary inhabitants of a particular city, as of all the people of all past ages ; concerning whom, and whose institutions, he was deemed to know whatever was to be known, and to be able to furnish whatever, within so vast a retrospect, was of a nature to give light and authority in the decision of questions arising in a doubtful and hazardous state of the national affairs."

" After all," says one of his biographers, " the most endearing part of Mr. Selden's character is elegantly touched by himself in the choice of his motto :"

Περί παντός την ελευθερίαν.

LIBERTY ABOVE ALL THINGS.

TO THE HONOURABLE
MR. JUSTICE HALES,

ONE OF THE JUDGES OF THE COMMON PLEAS;

AND TO THE MUCH HONOURED

EDWARD HEYWOOD, JOHN VAUGHAN,

AND

ROWLAND JEWKS, ESQUIRES.

MOST WORTHY GENTLEMEN,

WERE you not executors to that person, who, while he lived, was the glory of the nation; yet am I confident, any thing of his would find acceptance with you; and truly the sense and notion here is wholly his, and most of the words. I had the opportunity to hear his discourse twenty years together; and lest all those excellent things that usually fell from him might be lost, some of them from time to time I faithfully committed to writing, which, here digested into this method, I humbly present to your hands:—you will quickly perceive them to be his, by the familiar illustrations wherewith they are set off, and in which you know he was so happy, that, with a marvellous delight to those that heard him, he would presently convey

the highest points of religion, and the most important affairs of state, to an ordinary apprehension.

In reading, be pleased to distinguish times, and in your fancy carry along with you the *when* and the *why*, many of these things were spoken; this will give them the more life, and the smarter relish. It is possible, the entertainment you find in them, may render you the more inclinable to pardon the presumption of

Your most obliged, and

Most humble servant,

RI. MILWARD.

SELDEN'S

TABLE TALK.

ABBEYS, PRIORIES, &c.

1. THE unwillingness of the monks to part with their land, will fall out to be just nothing, because they were yielded up to the king by a supreme hand, viz. a parliament. If a king conquer another country, the people are loath to lose their lands; yet no divine will deny, but the king may give them to whom he please. If a parliament make a law concerning leather, or any other commodity, you and I for example, are parliament men; perhaps, in respect to our own private interests, we are against it, yet the major part conclude it: we are then involved, and the law is good.

2. When the founders of abbeys laid a curse upon those that should take away those lands, I would fain know what power they had to curse me; it is not the curses that come from the poor, or from any body, that hurt me, because they come from them, but because I do something ill against them that deserves God should curse me for it. On the

other side, it is not a man's blessing me that makes me blessed, he only declares me to be so ; and if I do well, I shall be blessed, whether any bless me or not.

3. At the time of dissolution, they were tender in taking from the abbots and priors their lands and their houses, till they surrendered them, as most of them did. Indeed, the prior of St. John's, sir Richard Weston, being a stout man, got into France, and stood out a whole year, at last submitted, and the king took in that priory also, to which the Temple belonged, and many other houses in England. They did not then cry—No abbots, no priors ; as we do now, No bishops, no bishops.

4. Henry the Fifth put away the friars, aliens, and seized to himself one hundred thousand pounds a year ; and therefore they were not the Protestants only that took away church lands.

5. In queen Elizabeth's time, when all the abbeyes were pulled down, all good works defaced, then the preachers must cry up justification by faith, not by good works.

ARTICLES.

The nine-and-thirty Articles are much another thing in Latin, (in which tongue they were made) than they are translated into English : they were made at three several convocations, and confirmed by act of parliament six or seven times after. There is a secret concerning them : of late ministers have subscribed to all of them, but by act of parliament that confirmed them, they ought only to subscribe to those articles which contain matter of

faith, and the doctrine of the sacraments, as appears by the first subscriptions. But bishop Bancroft, (in the convocation held in king James's days) he began it, that ministers should subscribe to three things; to the king's supremacy, to the Common Prayer, and to the Thirty-nine Articles: many of them do not contain matter of faith. Is it matter of faith how the church should be governed? whether infants should be baptized? whether we have any property in our goods? &c.

BAPTISM.

1. It was a good way to persuade men to be christened, to tell them that they had a foulness about them, viz. original sin, that could not be washed away but by baptism.

2. The baptizing of children, with us, does only prepare a child against he comes to be a man, to understand what Christianity means. In the church of Rome, it hath this effect, it frees children from hell. They say they go into *limbus infantum*. It succeeds circumcision, and we are sure the child understood nothing of that at eight days old; why then may not we as reasonably baptize a child at that age? In England, of late years, I ever thought the parson baptized his own fingers rather than the child.

3. In the primitive times, they had godfathers to see the children brought up in the Christian religion, because many times, when the father was a Christian, the mother was not; and sometimes, when the mother was a Christian, the father was not; and therefore they made choice of two or

more that were Christians, to see their children brought up in that faith.

BASTARD.

It is said, Deut. xxiii. 2. "A bastard shall not enter into the congregation of the Lord, even to the tenth generation.—*Non ingreditur in ecclesiam Domini*, he shall not enter into the church. The meaning of the phrase is, he shall not marry a Jewish woman. But upon this grossly mistaken: a bastard, at this day, in the church of Rome, without a dispensation, cannot take orders; the thing haply well enough, where it is so settled; but it is upon a mistake, (the place having no reference to the church) appears plainly by what follows at the third verse, "An Ammonite or Moabite shall not enter into the congregation of the Lord, even to the tenth generation." Now you know with the Jews, an Ammonite or a Moabite could never be a priest, because their priests were born so, not made.

BIBLE, SCRIPTURE.

1. It is a great question, how we know Scripture to be Scripture; whether by the church, or by man's private spirit. Let me ask you how I know any thing? how I know this carpet to be green? First, because somebody told me it was green; that you call the church in your way. Then after I have been told it is green, when I see that colour again, I know it to be green, my own eyes tell me it is green; that you call the private spirit.

2. The English translation of the Bible is the best translation in the world, and renders the sense of the original best, taking in for the English translation, the bishops' Bible, as well as king James's. The translation in king James's time took an excellent way : that part of the Bible was given to him who was most excellent in such a tongue, (as the Apocrypha to Andrew Downs) and then they met together, and one read the translation, the rest holding in their hands some Bible, either of the learned tongues, or French, Spanish, Italian, &c. ; if they found any fault, they spoke ; if not, he read on.

3. There is no book so translated as the Bible for the purpose. If I translate a French book into English, I turn it into English phrase, not into French-English, *il fait froid*, I say it is cold ; not, it makes cold : but the Bible is rather translated into English words, than into English phrase. The Hebraisms are kept, and the phrase of that language is kept ; as for example, " he uncovered her shame," which is well enough, so long as scholars have to do with it ; but when it comes among the common people, Lord, what gear do they make of it !

4. *Scrutamini Scripturas.* These two words have undone the world : because Christ spake it to his disciples, therefore we must all, men, women, and children, read and interpret the Scripture.

5. Henry the Eighth made a law, that all men might read the Scripture, except servants ; but no woman, except ladies and gentlewomen, who had leisure, and might ask somebody the meaning. The law was repealed in Edward the Sixth's days.

6. Lay-men have best interpreted the hard places in the Bible, such as Johannes Picus, Scaliger, Grotius, Salmasius, Heinsius, &c.

7. If you ask which of Erasmus, Beza, or Grotius, did best upon the New Testament, it is an idle question, for they all did well in their way. Erasmus broke down the first brick, Beza added many things, and Grotius added much to him, in whom we have either something new, or something heightened, that was said before; and so it was necessary to have them all three.

8. The text serves only to guess by: we must satisfy ourselves fully out of the authors that lived about those times.

9. In interpreting the Scripture, many do as if a man should see one have ten pounds, which he reckoned by one, two, three, four, five, six, seven, eight, nine, ten; meaning four, was but four units, and five, five units, &c. and that he had in all but ten pounds; the other that sees him, takes not the figures together as he doth, but picks here and there, and thereupon reports, that he hath five pounds in one bag, and six pounds in another bag, and nine pounds in another bag, &c. when as in truth, he hath but ten pounds in all. So we pick out a text here and there, to make it serve our turn; whereas, if we take it all together, and considered what went before, and what followed after, we should find it meant no such thing.

10. Make no more allegories in Scripture than needs must. The fathers were too frequent in them; they indeed, before they fully understood the literal sense, looked out for an allegory: the folly whereof you may conceive thus—here, at the

first sight, appears to me, in my window, a glass and a book ; I take it for granted it is a glass and a book ; thereupon I go about to tell you what they signify : afterwards, upon nearer view, they prove no such thing ; one is a box made like a book, the other is a picture made like a glass : where is now my allegory ?

11. When men meddle with the literal text, the question is, where they should stop ? In this case a man must venture his discretion, and do his best to satisfy himself and others in those places where he doubts ; for although we call the Scripture the word of God, (as it is) yet it was writ by a man, a mercenary man, whose copy either might be false, or he might make it false : for example, here were a thousand Bibles printed in England with the text thus—"Thou shalt commit adultery," the word *not* left out : might not this text be mended ?

12. The Scripture may have more senses besides the literal, because God understands all things at once ; but a man's writing has but one true sense, which is that which the author meant when he writ it.

13. When you meet with several readings of the text, take heed you admit nothing against the tenets of your church, but do as if you were going over a bridge ; be sure you hold fast by the rail, and then you may dance here and there as you please ; be sure you keep to what is settled, and then you may flourish upon your various lections.

14. The Apocrypha is bound with the Bibles of all churches that have been hitherto. Why should we leave it out ? the church of Rome has her Apocrypha, viz. Susanna, and Bell and the Dragon ;

which she does not esteem equally with the rest of those books that we call Apocrypha.

BISHOPS BEFORE THE PARLIAMENT.

1. A bishop, as a bishop, had never any ecclesiastical jurisdiction; for, as soon as he was *electus confirmatus*, that is, after the three proclamations in Bow-church, he might exercise jurisdiction before he was consecrated; not till then, he was no bishop, neither could he give orders. Besides, suffragans were bishops, and they never claimed any jurisdiction.

2. Anciently, the noblemen lay within the city for safety and security. The bishops' houses were by the water side, because they were held sacred persons which nobody would hurt.

3. There was some sense for *commendams*: at first, when there was a living void, and never a clerk to serve it, the bishop was to keep it till they found a fit man; but now it is a trick for the bishop to keep it for himself.

4. For a bishop to preach, it is to do other folks' office, as if the steward of the house should execute the porter's or the cook's place: it is his business to see that they and all other about the house perform their duties.

5. That which is thought to have done the bishops hurt, is their going about to bring men to a blind obedience, imposing things upon them, though perhaps small and well enough, without preparing them, and insinuating into their reasons and fancies. Every man loves to know his commander. I wear those gloves, but, perhaps, if an

alderman should command me, I should think much to do it: what has he to do with me? Or, if he has, peradventure I do not know it. This jumping upon things at first dash will destroy all: to keep up friendship, there must be little addresses and applications, whereas bluntness spoils it quickly: to keep up the hierarchy, there must be little applications made to men; they must be brought on by little and little: so in the primitive times, the power was gained, and so it must be continued. Scaliger said of Erasmus, *Si minor esse voluit, major fuisset*. So we may say of the bishops, *Si minores esse voluerint, majores fuissent*.

6. The bishops were too hasty, else, with a discreet slowness, they might have had what they aimed at: the old story of the fellow, that told the gentleman he might get to such a place, if he did not ride too fast, would have fitted their turn.

7. For a bishop to cite an old canon to strengthen his new articles, is as if a lawyer should plead an old statute that has been repealed God knows how long.

BISHOPS IN THE PARLIAMENT.

1. Bishops have the same right to sit in parliament as the best earls and barons, that is, those that were made by writ: if you ask one of them, (Arundel, Oxford, Northumberland) why they sit in the house? they can only say, their fathers sat there before them, and their grandfather before him, &c. and so say the bishops; he that was a bishop of this place before me, sat in the house, and he that was a bishop before him, &c. Indeed, your later earls and barons have it expressed in their patents, that they shall be called

to the parliament. *Objection.* But the lords sit there by blood, the bishops not. *Answ.* It is true, they sit not there both the same way, yet that takes not away the bishop's right : if I am a parson of a parish, I have as much right to my glebe and tithe, as you have to your land, which your ancestors have had in that parish eight hundred years.

2. The bishops were not barons because they had baronies annexed to their bishoprics ; (for few of them had so, unless the old ones, Canterbury, Winchester, Durham, &c. the new erected we are sure had none, as Gloucester, Peterborough, &c. besides, few of the temporal lords had any baronies) but they are barons, because they are called by writ to the parliament, and bishops were in the parliament ever since there was any mention or sign of a parliament in England.

3. Bishops may be judged by the peers, though in time of popery it never happened, because they pretended they were not obnoxious to a secular court, but their way was to cry, *Ego sum frater Domini Papæ*—I am brother to my lord the pope, and, therefore, take not myself to be judged by you : in this case, they empaneled a Middlesex jury, and dispatched the business.

4. Whether may bishops be present in cases of blood ? *Answ.* That they had a right to give votes, appears by this : always, when they did go out, they left a proxy ; and in the time of the abbots, one man had ten, twenty, or thirty voices. In Richard the Second's time, there was a protestation against the canons, by which they were forbidden to be present in case of blood. The statute of the twenty-fifth of Henry the Eighth may go a great way in this business. The clergy were forbidden to use or cite any

canon, &c. but in the latter end of the statute, there was a clause, that such canons that were in usage in this kingdom should be in force till the thirty-two commissioners appointed should make others, provided they were not contrary to the king's supremacy. Now the question will be, whether these canons for blood were in use in this kingdom or no? the contrary whereof may appear by many precedents, in Richard the Third, and Henry the Seventh, and the beginning of Henry the Eighth, in which time there were more attainted than since, or scarce before. The canons of irregularity of blood were never received in England, but upon pleasure. If a lay lord was attainted, the bishops assented to his condemning, and were always present at the passing of the bill of attainder; but, if a spiritual lord, they went out as if they cared not whose head was cut off, so none of their own. In those days, the bishops being of great houses, were often entangled with the lords in matters of treason. But when do you hear of a bishop a traitor now?

5. You would not have bishops meddle with temporal affairs; think who you are that say it. If a Papist, they do in your church; if an English Protestant, they do among you; if a Presbyterian, where you have no bishops, you mean your Presbyterian lay elders should meddle with temporal affairs as well as spiritual: besides, all jurisdiction is temporal, and in no church but they have some jurisdiction or other. The question then will be reduced to *magis* and *minus*; they meddle more in one church than in another.

6. *Objection.* Bishops give not their votes by blood in parliament, but by an office annexed to

them, which being taken away, they cease to vote ; therefore, there is not the same reason for them as for temporal lords. *Answ.* We do not pretend they have that power the same way, but they have a right : he that has an office in Westminster-hall for his life, the office is as much his, as his land is his that hath land by inheritance.

7. Whether had the inferior clergy ever any thing to do in the parliament ? *Answ.* No, no otherwise than thus : there were certain of the clergy that used to assemble near the parliament, with whom the bishops upon occasion might consult, (but there were none of the convocation, as it was afterwards settled, viz. the dean, the archdeacon, one for the chapter, and two for the diocese) but it happened, by continuance of time, to save charges and trouble, their voices, and the consent of the whole clergy were involved in the bishops ; and at this day, the bishops' writs run, to bring all these to the parliament, but the bishops themselves stand for all.

8. Bishops were formerly one of these two conditions ; either men bred canonists and civilians, sent up and down ambassadors to Rome and other parts, and so by their merit came to that greatness ; or else great noblemen's sons, brothers, and nephews, and so born to govern the state : now they are of a low condition, their education nothing of that way ; he gets a living, and then a greater living, and then a greater than that, and so comes to govern.

9. Bishops are now unfit to govern because of their learning ; they are bred up in another law, they run to the text for something done amongst the Jews that nothing concerns England : it is just

as if a man would have a kettle, and he would not go to our brazier to have it made as they make kettles, but he would have it made as Hiram made his brass-work, who wrought in Solomon's temple.

10. To take away bishops' votes, is but the beginning to take them away; for then they can be no longer useful to the king or state. It is but like the little wimble, to let in the greater auger. *Objection.* But, they are but for their life, and that makes them always go for the king as he will have them. *Answ.* This is against a double charity, for you must always suppose a bad king and bad bishops. Then again, whether will a man be sooner content, himself should be made a slave, or his son after him? (when we talk of our children, we mean ourselves) besides, they that have posterity are more obliged to the king, than they that are only for themselves, in all the reason in the world.

11. How shall the clergy be in the parliament if the bishops are taken away? *Answ.* By the laity, because the bishops, in whom the rest of the clergy are included, are sent to the taking away their own votes, by being involved in the major part of the house: this follows naturally.

12. The bishops being put out of the house, whom will they lay the fault upon now? when the dog is beat out of the room, where will they lay the stink?

BISHOPS OUT OF THE PARLIAMENT.

1. In the beginning, bishops and presbyters were alike, like the gentlemen in the country, whereof

one is made deputy lieutenant, another justice of peace ; so one is made a bishop, another a dean ; and that kind of government by archbishops and bishops, no doubt came in, in imitation of the temporal government, not *jure divino*. In time of the Roman empire, where they had a legatus, there they placed an archbishop ; where they had a rector, there a bishop ; that every one might be instructed in Christianity, which now they had received into the empire.

2. They that speak ingeniously of bishops and presbyters, say, that a bishop is a great presbyter, and during the time of his being bishop, above a presbyter ; as your president of the college of physicians is above the rest, yet he himself is no more than a doctor of physic.

3. The words bishop and presbyter are promiscuously used, that is confessed by all : and though the word bishop be in Timothy and Titus, yet that will not prove the bishops ought to have a jurisdiction over the presbyter, though Timothy or Titus had by the order that was given them ; somebody must take care of the rest, and that jurisdiction was but to excommunicate, and that was but to tell them they should come no more into their company ; or grant they did make canons one for another, before they came to be in the state, does it follow they must do so when the state has received them into it ? What if Timothy had power in Ephesus, and Titus in Crete, over the presbyters ? does it follow therefore the bishop must have the same in England ? must we be governed like Ephesus and Crete ?

4. However some of the bishops pretend to be *jure divino*, yet the practice of the kingdom had ever been otherwise ; for whatever bishops do otherwise than the law permits, Westminster-hall can control, or send them to absolve, &c.

5. He that goes about to prove bishops *jure divino*, does as a man that having a sword shall strike it against an anvil : if he strike it awhile there, he may peradventure loosen it, though it be never so well rivetted : 'twill serve to strike another sword, or cut flesh, but not against an anvil.

6. If you should say you hold your land by Moses or God's law, and would try it by that, you may perhaps lose, but by the law of the kingdom you are sure of it : so may the bishops by this plea of *jure divino* lose all. The pope had as good a title by the law of England as could be had, had he not left that, and claimed by power from God.

7. There is no government enjoined by example, but by precept ; it does not follow we must have bishops still, because we have had them so long. They are equally mad who say bishops are so *jure divino*, that they must be continued, and they who say they are so antichristian, that they must be put away : all is as the state pleases.

8. To have no ministers but presbyters, it is as in the temporal state they should have no officers but constables. Bishops do best stand with monarchy ; that as amongst the laity, you have dukes, lords, lieutenants, judges, &c. to send down the king's pleasure to his subjects—so you have bishops to govern the inferior clergy : these upon occasion may address themselves to the king ; otherwise, every

parson of the parish must come, and run up to the court.

9. The Protestants have no bishops in France, because they live in a Catholic country, and they will not have Catholic bishops ; therefore, they must govern themselves as well as they may.

10. What is that to the purpose, to what end bishops' lands were given to them at first ? you must look to the law and custom of the place. What is that to any temporal lord's estate, how lands were first divided, or how in William the Conqueror's days ? And if men at first were juggled out of their estates, yet they are rightly their successors. If my father cheat a man, and he consent to it, the inheritance is rightly mine.

11. If there be no bishops, there must be something else, which has the power of bishops, though it be in many ; and then had you not as good keep them ? If you will have no half-crowns, but only single pence, yet thirty single pence are a half-crown ; and then had you not as good keep both ? But the bishops have done ill : it was the men, not the function ; as if you should say, you would have no more half-crowns, because they were stolen ; when the truth is, they were not stolen because they were half-crowns, but because they were money, and light in a thief's hand.

12. They that would pull down the bishops, and erect a new way of government, do as he that pulls down an old house, and builds another, in another fashion ; there is a great deal of do, and a great deal of trouble ; the old rubbish must be carried away, and new materials must be brought ; workmen must

be provided—and perhaps the old one would have served as well.

13. If the parliament and presbyterian party should dispute who should be judge? Indeed, in the beginning of queen Elizabeth, there was such a difference between the Protestants and Papists, and sir Nicholas Bacon, lord chancellor, was appointed to be judge; but the conclusion was, the stronger party carried it: for so religion was brought into kingdoms, so it has been continued, and so it may be cast out, when the state pleases.

14. It will be a great discouragement to scholars that bishops should be put down; for now the father can say to his son, and the tutor to his pupil, “Study hard, and you shall have *vocem et sedem in parlamento*,” then it must be, “Study hard, and you shall have a hundred a year, if you please your parish.” *Objection.* But they that enter into the ministry for preferment, are like Judas that looked after the bag. *Answer.* It may be so, if they turn scholars at Judas’s age; but what arguments will they use to persuade them to follow their books while they are young?

BOOKS, AUTHORS.

1. The giving a bookseller his price for his books has this advantage: he that will do so, shall have the refusal of whatsoever comes to his hand, and so by that means get many things, which, otherwise, he never should have seen: so it is in giving a bawd her price.

2. In buying books or other commodities, it is not always the best way to bid half so much as the

seller asks : witness the country fellow that went to buy two *shovel* groat shillings ; they asked him three shillings, and he bid them eighteen pence.

3. They counted the price of the books (Acts, xix. 19) and found fifty thousand pieces of silver, that is so many sextertii, or so many three-halfpence of our money, about three hundred pounds sterling.

4. Popish books teach and inform : what we know, we know much out of them. The fathers, church story, schoolmen, all may pass for Popish books ; and if you take away them, what learning will you leave ? Besides, who must be judge ? the customer or the waiter ? If he disallows a book, it must not be brought into the kingdom ; then Lord have mercy upon all scholars. These puritan preachers, if they have any things good, they have it out of Popish books, though they will not acknowledge it, for fear of displeasing the people : he is a poor divine that cannot sever the good from the bad.

5. It is good to have translations, because they serve as a comment, so far as the judgment of the man goes.

6. In answering a book, it is best to be short, otherwise he that I write against will suspect I intend to weary him, not to satisfy him : besides, in being long, I shall give my adversary a huge advantage ; somewhere or other he will pick a hole.

7. In quoting of books, quote such authors as are usually read ; others you may read for your own satisfaction, but not name them.

8. Quoting of authors is most for matter of fact ; and then I write them as I would produce a witness, sometimes for a free expression ; and then I give

the author his due, and gain myself praise by reading him.

9. To quote a modern Dutchman, where I may use a classic author, is as if I were to justify my reputation, and I neglect all persons of note and quality that know me, and bring the testimonial of the scullion in the kitchen.

CANON LAW.

If I would study the canon law, as it is used in England, I must study the heads here in use, then go to the practisers in those courts where that law is practised, and know their customs: so for all the study in the world.

CEREMONY.

1. Ceremony keeps up all things; it is like a penny-glass to a rich spirit, or some excellent water; without it the water were spilt, the spirit lost.

2. Of all people, ladies have no reason to cry down ceremonies, for they take themselves slighted without it. And were they not used with ceremony, with compliments and addresses, with legs, and kissing of hands, they were the pitifullest creatures in the world; but yet, methinks, to kiss their hands after their lips, as some do, is like little boys, that after they eat the apple, fall to the paring, out of a love they have to the apple.

CHANCELLOR.

1. The bishop is not to sit with the chancellor in his court, as being a thing either beneath him, or beside him, no more than the king is to sit in the king's bench when he has made a lord chief-justice.

2. The chancellor governed in the church, who was a layman ; and, therefore, it is false which they charge the bishops with, that they challenge sole jurisdiction ; for the bishop can no more put out the chancellor, than the chancellor the bishop. They were many of them made chancellors for their lives ; and he is the fittest man to govern, because divinity so overwhelms the rest.

CHANGING SIDES.

1. It is the trial of a man to see if he will change his side ; and if he be so weak as to change once, he will change again. Your country fellows have a way to try if a man be weak in the hams, by coming behind him, and giving him a blow unawares ; if he bend once, he will bend again.

2. The lords that fall from the king, after they have got estates by base flattery at court, and now pretend conscience, do as a vintner, that when he first sets up, you may bring your wench to his house, and do your things there ; but when he grows rich, he turns conscientious, and will sell no wine upon the Sabbath-day.

3. Colonel Goring, serving first the one side and then the other, did like a good miller that knows how to grind, which way soever the wind sits.

4. After Luther had made a combustion in Germany about religion, he was sent to by the pope, to be taken off, and offered any preferment in the church, that he would make choice of. Luther answered—if he had offered half as much at first, he would have accepted it ; but now he had gone so far, he could not come back. In truth, he had made himself a greater thing than they could make him ; the German princes courted him ; he was become the author of a sect ever after to be called Lutherans. So have our preachers done that are against the bishops ; they have made themselves greater with the people than they can be made the other way, and, therefore, there is the less charity probably in bringing them off. Charity to strangers is enjoined in the text : by strangers, is there understood, those that are not of our own kin, strangers to your blood, not those you cannot tell whence they come ; that is, be charitable to your neighbours, whom you know to be honest poor people.

CHRISTMAS.

1. Christmas succeeds the Saturnalia, the same time, the same number of holydays, then the master waited upon the servant, like the lord of misrule.

2. Our meats and our sports (much of them) have relation to church-works. The coffin of our Christmas pies, in shape long, is in imitation of the cratch ; our choosing kings and queens, on Twelfth-night, hath reference to the three kings : so, likewise, our eating of fritters, whipping of tops, roasting of herrings, Jack of Lents, &c. they were all in

imitation of church-works, emblems of martyrdom. Our tansies, at Easter, have reference to the bitter herbs; though, at the same time, it was always the fashion for a man to have a gammon of bacon, to show himself to be no Jew.

CHRISTIANS.

1. In the high church of Jerusalem, the Christians were but another sect of Jews, that did believe the Messias was come. To be called, was nothing else but to become a Christian, to have the name of a Christian, it being their own language; for, amongst the Jews, when they made a doctor of law, it was said, he was called.

2. The Turks tell their people of a heaven where there is sensible pleasure—but of a hell where they shall suffer they do not know what: the Christians quite invert this order; they tell us of a hell where we shall feel sensible pain—but of a heaven where we shall enjoy we cannot tell what.

3. Why did the heathens object to the Christians, that they worship an ass's head? You must know, that to a heathen, a Jew and a Christian were all one, that they regarded him not, so he was not one of them. Now, that of the ass's head might proceed from such a mistake as this: by the Jews' law all the firstlings of cattle were to be offered to God, except a young ass, which was to be redeemed: a heathen being present, and seeing young calves and young lambs killed at their sacrifices, only young asses redeemed, might very well think they had that silly beast in some high estimation, and thence might imagine they worshipped it as a god.

CHURCH.

1. Heretofore the kingdom let the church alone, let them do what they would, because they had something else to think of, *viz.* wars; but now, in time of peace, we begin to examine all things, will have nothing but what we like, grow dainty and wanton; just as in a family, the heir uses to go a hunting, he never considers how his meal is dressed, takes a bit, and away; but when he stays within, then he grows curious, he does not like this nor he does not like that, he will have his meat dressed his own way, or, peradventure, he will dress it himself.

2. It hath ever been the gain of the church, when the king will let the church have no power, to cry down the king and cry up the church; but when the church can make use of the king's power, then to bring all under the king's prerogative: the Catholics of England go one way, and the court clergy another.

3. A glorious church is like a magnificent feast; there is all the variety that may be, but every one chooses out a dish or two that he likes, and lets the rest alone: how glorious soever the church is, every one chooses out of it his own religion, by which he governs himself, and lets the rest alone.

4. The laws of the church are most favourable to the church, because they were the church's own making; as the heralds are the best gentlemen, because they make their own pedigree.

5. There is a question about that article, concerning the power of the church, whether these words (of having power in controversies of faith)

were not stolen in ; but it is most certain they were in the book of articles that was confirmed, though, in some editions, they have been left out : but the article before tells you who the church is ; not the clergy, but *cætus fidelium*.

CHURCH OF ROME.

1. Before a juggler's tricks are discovered, we admire him, and give him money, but afterwards we care not for them ; so it was before the discovery of the juggling of the church of Rome.

2. Catholics say, we, out of our charity, believe they of the church of Rome may be saved ; but they do not believe so of us ; therefore, their church is better, according to ourselves : first, some of them no doubt believe as well of us, as we do of them, but they must not say so ; besides, is that an argument their church is better than ours, because it has less charity ?

3. One of the church of Rome will not come to our prayers : does that agree he doth not like them ? I would fain see a Catholic leave his dinner, because a nobleman's chaplain says grace ; nor haply would he leave the prayers of the church, if going to church were not made a mark of distinction between a Protestant and a Papist.

CHURCHES.

The way coming into our great churches was anciently at the west door, that men might see the altar, and all the church before them : the other doors were but posterns.

CITY.

1. What makes a city? whether a bishopric or any of that nature? *Answer.* It is according to the first charter which made them a corporation: if they are incorporated by name of *civitas*, they are a city; if by the name of *burgum*, then they are a borough.

2. The lord mayor of London, by their first charter, was to be presented to the king, in his absence to the lord chief justiciary of England, afterwards to the lord chancellor, now to the barons of the exchequer; but still there was a reservation, that, for their honour, they should come once a year to the king, as they do still.

CLERGY.

1. Though a clergyman have no faults of his own, yet the faults of the whole tribe shall be laid upon him, so that he shall be sure not to lack.

2. The clergy would have us believe them against our own reason, as the woman would have had her husband against his own eyes: "What! will you believe your own eyes before your own sweet wife?"

3. The condition of the clergy towards their prince, and the condition of the physician, is all one: the physicians tell the prince they have agric and rhubarb, good for him, and good for his subjects' bodies; upon this, he gives them leave to use it; but if it prove naught, then away with it, they

shall use it no more : so the clergy tell the prince they have physic good for his soul, and good for the souls of his people : upon that he admits them ; but when he finds, by experience, they both trouble him and his people, he will have no more to do with them. What is that to them, or any body else, if a king will not go to heaven ?

4. A clergyman goes not a dram farther than this, you ought to obey your prince in general ; if he does he is lost : how to obey him you must be informed by those whose profession it is to tell you. The parson of the Tower, a good discreet man, told Dr. Mosely, who was sent to me, and the rest of the gentlemen committed in the third of Charles, to persuade us to submit to the king ; that they found no such words as parliament, habeas corpus, return, tower, &c. neither in the fathers, nor the schoolmen, nor in the text ; and, therefore, for his part, he believed he understood nothing of the business. A satire upon all those clergymen that meddle with matters they do not understand.

5. All confess there never was a more learned clergy ; no man taxes them with ignorance ; but to talk of that, is like the fellow that was a great wencher ; he wished God would forgive him his lechery, and lay usury to his charge. The clergy have worse faults.

6. The clergy and laity together are never like to do well ; it is as if a man were to make an excellent feast, and should have his apothecary and physician come into the kitchen : the cooks, if they were let alone, would make excellent meat ; but then comes the apothecary, and he puts rhubarb into

one sauce, and agric into another sauce : chain up the clergy on both sides.

HIGH COMMISSION.

Men cry out upon the high commission, as if the clergymen only had to do in it, when I believe there are more laymen in commission there than clergymen : if the laymen will not come, whose fault is that ? So of the star-chamber, the people think the bishops only censured Prynne, Burton, and Bastwick, when there were but two there, and one spake not in his own cause.

HOUSE OF COMMONS.

1. There be but two erroneous opinions in the house of commons, that the lords sit only for themselves, when the truth is, they sit as well for the commonwealth. The knights and burgesses sit for themselves and others, some for more, some for fewer ; and what is the reason ? because the room will not hold all : the lords being few, they all come, and imagine the room able to hold all the commons of England, then the lords and burgesses would sit no otherwise than the lords do. The second error is, that the house of commons are to begin to give subsidies ; yet, if the lords dissent, they can give no money.

2. The house of commons is called the lower house in twenty acts of parliament ; but what are twenty acts of parliament amongst friends ?

3. The form of a charge runs thus, *I accuse in the name of all the commons of England* ; how then can any man be, as a witness, when every man is made the accuser ?

CONFESSION.

1. In time of parliament it used to be one of the first things the house did to petition the king that his confessor might be removed, as fearing either his power with the king, or else, lest he should reveal to the pope what the house was in doing, as no doubt he did, when the Catholic cause was concerned.

2. The difference between us and the Papists is, we both allow contrition; but the Papists make confession a part of contrition: they say a man is not sufficiently contrite till he confess his sins to a priest.

3. Why should I think a priest will not reveal confession? I am sure he will do any thing that is forbidden him, haply not so often as I. The utmost punishment is deprivation; and how can it be proved that ever any man revealed confession when there is no witness? and no man can be witness in his own cause. A mere gullery! There was a time when it was public in the church, and that is much against their auricular confession.

COMPETENCY.

That which is a competency for one man, is not enough for another, no more than that which will keep one man warm, will keep another man warm; one man can go in doublet and hose, when another man cannot be without a cloak, and yet have no more clothes than is necessary for him.

GREAT CONJUNCTION.

The greatest conjunction of Saturn and Jupiter happens but once in eight hundred years, and therefore, astrologers can make no experiments of it, nor foretell what it means : not but that the stars may mean something ; but we cannot tell what, because we cannot come at them : suppose a planet were a simple, or an herb ; how could a physician tell the virtue of that simple, unless he could come at it, to apply it ?

CONSCIENCE.

1. He that hath a scrupulous conscience, is like a horse that is not well weighed ; he starts at every bird that flies out of the hedge.

2. A knowing man will do that which a tender conscience man dares not do, by reason of his ignorance ; the other knows there is no hurt : as a child is afraid to go into the dark, when a man is not, because he knows there is no danger.

3. If we once come to leave that outloose, as to pretend conscience against law, who knows what inconvenience may follow ? for thus, suppose an Anabaptist comes and takes my horse ; I sue him : he tells me he did according to his conscience ; his conscience tells him all things are common amongst the saints ; what is mine is his ; therefore you do ill to make such a law. If any man takes another's horse, he shall be hanged : what can I say to this man ? He does according to his conscience. Why is not he as honest a man as he that pre-

tends a ceremony established by law is against his conscience? Generally to pretend conscience against law is dangerous; in some cases haply we may.

4. Some men make it a case of conscience, whether a man may have a pigeon-house, because his pigeons eat other folks corn. But there is no such thing as conscience in the business: the matter is, whether he be a man of such quality, that the state allows him to have a dove-house: if so, there is an end of the business; his pigeons have a right to eat where they please themselves.

CONSECRATED PLACES.

1. The Jews had a peculiar way of consecrating things to God, which we have not.

2. Under the law, God, who was master of all, made choice of a temple to worship in, where he was more especially present: just as the master of the house, who owns all the house, makes choice of one chamber to lie in, which is called the master's chamber; but under the Gospel there was no such thing. Temples and churches are set apart for the conveniency of men to worship in: they cannot meet upon the point of a needle, but God himself makes no choice.

3. All things are God's already; we can give him no right by consecrating any that he had not before, only we set it apart to his service: just as a gardener brings his lord and master a basket of apricots, and presents them; his lord thanks him, perhaps gives him something for his pains; and yet the apricots were as much his lord's before as now.

4. What is consecrated, is given to some particular man, to do God service ; not given to God, but given to man to serve God : and there is not any thing, lands or goods, but some men or other have it in their power to dispose of as they please : the saying things consecrated cannot be taken away, makes men afraid of consecration.

5. Yet consecration has this power : when a man has consecrated any thing to God, he cannot of himself take it away.

CONTRACTS.

1. If our fathers have lost their liberty, why may not we labour to regain it ? *Answ.* We must look to the contract ; if that be rightly made, we must stand to it : if we once grant we may recede from contracts upon any inconveniency that may afterwards happen, we shall have no bargain kept. If I sell you a horse, and do not like my bargain, I will have my horse again.

2. Keep your contracts : so far a divine goes ; but how to make our contracts is left to ourselves ; and as we agree upon the conveying of this house, or that land, so it must be : if you offer me a hundred pounds for my glove, I tell you what my glove is, a plain glove ; pretend no virtue in it ; the glove is my own : I profess not to sell gloves, and we agree for a hundred pounds : I do not know why I may not with a safe conscience take it. The want of that common obvious distinction of *jus præceptivum* and *jus permissivum*, does much trouble men.

3. Lady Kent articted with sir Edward Herbert, that he should come to her when she sent for him,

and stay with her as long as she would have him ; to which he set his hand : then he articulated with her, that he should go away when he pleased, and stay away as long as he pleased ; to which she set her hand. This is the epitome of all the contracts in the world, betwixt man and man, betwixt prince and subject ; they keep them as long as they like them, and no longer.

COUNCIL.

They talk, (but blasphemously enough) that the Holy Ghost is president of their general councils ; when the truth is, the odd man is still the Holy Ghost.

CONVOCATION.

1. When the king sends his writ for a parliament, he sends for two knights for a shire, and two burgesses for a corporation : but when he sends for two archbishops for a convocation, he commands them to assemble the whole clergy ; but they out of custom amongst themselves send to the bishops of their provinces, to will them to bring two clerks for a diocese, the dean, one for the chapter, and the archdeacons ; but to the king, every clergyman is there present.

2. We have nothing so nearly expresses the power of a convocation, in respect of a parliament, as a court-leet, where they have a power to make by-laws, as they call them—as that a man shall put so many cows or sheep in the common : but they can make nothing that is contrary to the laws of the kingdom.

CREED.

Athanasius's creed is the shortest—take away the preface, and the force, and the conclusion—which are not part of the creed. In the Nicene creed it is *εις εκκλησιαν*, “I believe in the church;” but now, as our Common Prayer has it, “I believe one catholic and apostolic church.” They like not creeds, because they would have no forms of faith, as they have none of prayer, though there be more reason for the one than for the other.

DAMNATION.

1. If the physician sees you eat any thing that is not good for your body, to keep you from it, he cries, “It is poison:” if the divine sees you do any thing that is hurtful for your soul, to keep you from it, he cries, “You are damned.”

2. To preach long, loud, and damnation, is the way to be cried up: we love a man that damns us, and we run after him again to save us. If a man had a sore leg, and he should go to an honest judicious surgeon, and he should only bid him keep it warm, and anoint with such an oil, an oil well known, that would do the cure; haply, he would not much regard him, because he knows the medicine beforehand an ordinary medicine: but if he should go to a surgeon that should tell him, “Your leg will gangrene within three days, and it must be cut off, and you will die, unless you do something that I could tell you;” what listening there would be to this man! “O, for the Lord's sake, tell me what this is; I will give you any content for your pains.”

DEVILS.

1. Why have we none possessed with devils in England? The old answer is, the Protestants the devil hath already, and the Papists are so holy, he dares not meddle with them. Why then, beyond seas, where a nun is possessed, when a Hugonot comes into the church, does not the devil hunt them out? The priest teaches him, you never saw the devil throw up a nun's coats; mark that, the priest will not suffer it, for then the people will spit at him.

2. Casting out devils is mere juggling; they never cast out any but what they first cast in: they do it where, for reverence, no man shall dare to examine it; they do it in a corner, in a mortice-hole, not in the market-place: they do nothing but what may be done by art; they make the devil fly out of the window, in the likeness of a bat or a rat. Why do they not hold him? Why, in the likeness of a bat, or a rat, or some creature? that is, why not in some shape we paint him in, with claws and horns? By this trick they gain much, gain upon men's fancies, and so are revered; and certainly, if the priest deliver me from him that is my most deadly enemy, I have all the reason in the world to reverence him. *Objection.* But if this be juggling, why do they punish impostures? *Answer.* For great reason; because they do not play their part well, and for fear others should discover them; and so all of them ought to be of the same trade.

3. A person of quality came to my chamber in the Temple, and told me he had two devils in his head,

(I wondered what he meant) and, just at that time, one of them bid him kill me. With that I began to be afraid, and thought he was mad. He said he knew I could cure him, and therefore entreated me to give him something, for he was resolved he would go to nobody else. I perceiving what an opinion he had of me, and that it was only melancholy that troubled him, took him in hand, warranted him, if he would follow my directions, to cure him in a short time : I desired him to let me be alone about an hour, and then to come again—which he was very willing to. In the mean time, I got a card, and wrapped it up handsome in a piece of taffata, and put strings to the taffata ; and, when he came, gave it to him, to hang about his neck ; withal charged him, that he should not disorder himself, neither with eating or drinking, but eat very little of supper, and say his prayers duly when he went to bed ; and I made no question but he would be well in three or four days. Within that time I went to dinner to his house, and asked him how he did ? He said he was much better, but not perfectly well, for, in truth, he had not dealt clearly with me ; he had four devils in his head, and he perceived two of them were gone, with that which I had given him, but the other two troubled him still. “ Well,” said I, “ I am glad two of them are gone ; I make no doubt to get away the other two likewise.” So I gave him another thing to hang about his neck. Three days after he came to me to my chamber, and professed he was now as well as ever he was in his life, and did extremely thank me for the great care I had taken of him. I, fearing lest he might relapse into the like distemper,

told him that there was none but myself, and one physician more in the whole town that could cure the devils in the head, and that was Dr. Harvey, (whom I had prepared) and wished him, if ever he found himself ill in my absence, to go to him, for he could cure his disease as well as myself. The gentleman lived many years, and was never troubled after.

SELF DENIAL.

It is much the doctrine of the times that men should not please themselves, but deny themselves every thing they take delight in; not look upon beauty, wear no good clothes, eat no good meat, &c. which seems the greatest accusation that can be upon the Maker of all good things. If they be not to be used, why did God make them? The truth is, they that preach against them, cannot make use of them themselves; and then again they get esteem by seeming to condemn them. But, mark it, while you live, if they do not please themselves as much as they can; and we live more by example than precept.

DUEL.

1. A duel may still be granted in some cases by the law of England, and only there: that the church allowed it anciently, appears by this; in their public liturgies, there were prayers appointed for the duelists to say; the judge used to bid them go to such a church and pray, &c. But whether is this lawful? If you grant any war lawful, I make no doubt but to convince it. War is lawful, because

God is the only judge between two, that is supreme. Now, if a difference happen between two subjects, and it cannot be decided by human testimony, why may not they put it to God to judge between them by the permission of the prince? Nay, what if we should bring it down, for argument's sake, to the swordmen. One gives me the lie; it is a great disgrace to take it; the law has made no provision to give remedy for the injury; (if you can suppose any thing an injury for which the law gives no remedy) why am not I, in this case, supreme, and may, therefore, right myself?

2. A duke ought to fight with a gentleman. The reason is this: the gentleman will say to the duke, "It is true, you hold a higher place in the state than I; there is a great distance between you and me—but your dignity does not privilege you to do me an injury: as soon as ever you do me an injury, you make yourself my equal; and as you are my equal, I challenge you:" and in sense the duke is bound to answer him. This will give you some light to understand the quarrel betwixt a prince and his subjects: though there be a vast distance between him and them, and they are to obey him, according to their contract, yet he hath no power to do them an injury; then they think themselves as much bound to vindicate their right, as they are to obey his lawful commands, nor is there any other measure of justice left upon earth but arms.

EPITAPH.

An epitaph must be made fit for the person for whom it is made: for a man to say all the excellent

things that can be said upon one, and call that his epitaph, is as if a painter should make the handsomest piece he can possibly make, and say it was my picture. It holds in a funeral sermon.

EQUITY.

1. Equity in law is the same that the spirit is in religion, what every one pleases to make it ; sometimes they go according to conscience, sometimes according to law, sometimes according to the rule of court.

2. Equity is a roguish thing ; for law we have a measure—know what to trust to ; equity is according to the conscience of him that is chancellor, and as that is larger or narrower, so is equity. It is all one as if they should make the standard for the measure we call a foot, a chancellor's foot ; what an uncertain measure would this be ! One chancellor has a long foot, another a short foot, a third an indifferent foot : it is the same thing in the chancellor's conscience.

3. That saying, “ Do as you would be done to,” is often misunderstood ; for it is not thus meant—that I, a private man, should do to you, a private man, as I would have you do to me, but do as we have agreed to do one to another by public agreement. If the prisoner should ask the judge, whether he would be contented to be hanged, were he in his case, he would answer—No : Then, says the prisoner, do as you would be done to. Neither of them must do as private men, but the judge must do by him as they have publicly agreed—that is,

both judge and prisoner have consented to a law, that if either of them steal, they shall be hanged.

EVIL SPEAKING.

1. He that speaks ill of another, commonly before he is aware, makes himself such a one as he speaks against ; for, if he had civility or breeding, he would forbear such kind of language.

2. A gallant man is above ill words : an example we have in the old lord of Salisbury, who was a great wise man. Stone had called some lord about court, fool ; the lord complains, and has Stone whipped : Stone cries, " I might have called my lord of Salisbury fool often enough, before he would have had me whipped."

3. Speak not ill of a great enemy ; but rather give him good words, that he may use you the better, if you chance to fall into his hands. The Spaniard did this when he was dying : his confessor told him, to work him to repentance, how the devil tormented the wicked that went to hell : the Spaniard replying, called the devil my lord. " I hope my lord the devil is not so cruel : " his confessor reproved him. " Excuse me," said the Don, " for calling him so : I know not into what hands I may fall ; and if I happen into his, I hope he will use me the better for giving him good words."

EXCOMMUNICATION.

1. That place they bring for excommunication, " Put away from among yourselves that wicked person," 1 Cor. v. 13, is corrupted in the Greek ; for it

should be, το πονηρον, “put away that evil from among you;” not τον πονηρον, “that evil person;” besides, ὁ πονηρος is the *devil* in Scripture, and it may be so taken there; and there is a new edition of Theodoret come out, that has it right, το πονηρον. It is true, the Christians, before the civil state became Christian, did, by covenant and agreement set down how they should live; and he that did not observe what they agreed upon, should come no more amongst them; that is, be excommunicated. Such men are spoken of by the apostle, Rom. i. 31, whom he calls ασυνητους και απονιδους, the Vulgate has it, *incompositos, et sine fœdere*; the last word is pretty well, but the first not at all. Origen, in his book against Celsus, speaks of the Christians’ συνηκη: the translation renders it *conventus*, as it signifies a *meeting*; when it is plain it signifies a *covenant*; and the English Bible turned the other word well—*covenant-breakers*. Pliny tells us, the Christians took an oath amongst themselves to live thus and thus.

2. The other place, *dic ecclesiæ*, “tell the church,” is but a weak ground to raise excommunication upon, especially from the sacrament—the lesser excommunication; since, when that was spoken, the sacrament was instituted. The Jews’ *ecclesia* was their *sanhedrim*, their court; so that the meaning is, if after once or twice admonition this brother will not be reclaimed, bring him thither.

3. The first excommunication was one hundred and eighty years after Christ, and that by Victor, bishop of Rome: but that was no more than this—that they should communicate and receive the sacrament amongst themselves, not with those of the

other opinion ; the controversy, as I take it, being about the feast of Easter. Men do not care for excommunication, because they are shut out of the church, or delivered up to Satan, but because the law of the kingdom takes hold of them : after so many days a man cannot sue, no, not for his wife, if you take her from him ; and there may be as much reason to grant it for a small fault, if there be contumacy, as for a great one : in Westminster-hall you may outlaw a man for forty shillings, which is their excommunication, and you can do no more for forty thousand pounds.

4. When Constantine became Christian, he so fell in love with the clergy, that he let them be judges of all things ; but that continued not above three or four years, by reason they were to be judges of matters they understood not, and then they were allowed to meddle with nothing but religion ; all jurisdiction belonged to him, and he scanted them out as much as he pleased ; and so things have since continued. They excommunicate for three or four things—matters concerning adultery, tithes, wills, &c. which is the civil punishment the state allows for such faults. If a bishop excommunicate a man for what he ought not, the judge has power to absolve, and punish the bishop. If they had that jurisdiction from God, why does not the church excommunicate for murder, for theft ? If the civil power might take away all but three things, why may they not take them away too ? If this excommunication were taken away, the presbyters would be quiet ; it is that they have a mind to, it is that they would fain be at, like the wench that was to be married ; she asked her mother, when it was

done, if she should go to bed presently? No, says her mother, you must dine first. And then to bed, mother? No, you must dance after dinner. And then to bed, mother? No, you must go to supper. And then to bed, mother? &c.

FAITH AND WORKS.

It was an unhappy division that has been made between faith and works, though, in my intellect, I may divide them; just as in the candle, I know there is both light and heat: but yet put out the candle, and they are both gone—one remains not without the other: so it is betwixt faith and works; nay, in a right conception, *fides est opus*; if I believe a thing because I am commanded, that is *opus*.

FASTING DAYS.

1. What the church debars us one day, she gives us leave to take out in another: first we fast, and then we feast; first there is a Carnival, and then a Lent.

2. Whether do human laws bind the conscience? If they do, it is a way to ensnare: if we say they do not, we open the door to disobedience. *Answer.* In this case we must look to the justice of the law, and intention of the lawgiver. If there be no justice in the law, it is not to be obeyed; if the intention of the lawgiver be absolute, our obedience must be so too. If the intention of the lawgiver enjoin a penalty, as a compensation for the breach of the law, I sin not if I submit to the penalty; if it enjoin a penalty, as a future enforcement of obedience to

the law, then ought I to observe it, which may be known by the often repetition of the law. The way of fasting is enjoined unto them, who yet do not observe it. The law enjoins a penalty as an enforcement to obedience; which intention appears by the often calling upon us to keep that law by the king, and the dispensation of the church to such as are not able to keep it—as young children, old folks, diseased men, &c.

FATHERS AND SONS.

It hath ever been the way for fathers to bind their sons. to strengthen this by the law of the land, every one at twelve years of age, is to take the oath of allegiance in court-leets, whereby he swears obedience to the king.

FINES.

The old law was, that when a man was fined, he was to be fined *salvo contenemento*, so as his countenance might be safe; taking countenance in the same sense as your countryman does, when he says, “If you will come unto my house, I will show you the best countenance I can;” that is, not the best face, but the best entertainment. The meaning of the law was, that so much should be taken from a man, such a gobbet sliced off, that yet, notwithstanding he might live in the same rank and condition he lived in before; but now they fine men ten times more than they are worth.

FREE WILL.

The Puritans, who will allow no free will at all, but God does all, yet will allow the subject his liberty to do, or not to do, notwithstanding the king, the god upon earth. The Arminians, who hold we have free will, yet say, when we come to the king, there must be all obedience, and no liberty to be stood for.

FRIARS.

1. The friars say they possess nothing; whose then are the lands they hold? Not their superior's; he hath vowed poverty as well as they; whose then? To answer this, it was decreed they should say they were the pope's. And why must the friars be more perfect than the pope himself?

2. If there had been no friars, Christendom might have continued quiet, and things remained at a stay.

3. If there had been no lecturers (which succeed the friars in their way) the church of England might have stood, and flourished at this day.

FRIENDS.

Old friends are best. King James used to call for his old shoes; they were easiest for his feet.

GENEALOGY OF CHRIST.

1. They that say the reason why Joseph's pedigree is set down, and not Mary's, is, because the

descent from the mother is lost, and swallowed up, say something ; but yet if a Jewish woman married with a Gentile, they only took notice of the mother, not of the father ; but they that say they were both of a tribe, say nothing ; for the tribes might marry one with another, and the law against it was only temporary, in the time while Joshua was dividing the land, lest the being so long about it, there might be a confusion.

2. That Christ was the son of Joseph is most exactly true ; for though he was the Son of God, yet, with the Jews, if any man kept a child, and brought him up, and called him son—he was taken for his son ; and his land, if he had any, was to descend upon him ; and, therefore, the genealogy of Joseph is justly set down.

GENTLEMEN.

1. What a gentleman is, it is hard with us to define. In other countries, he is known by his privileges ; in Westminster-hall, he is one that is reputed one ; in the Court of Honour, he that hath arms. 'The king cannot make a gentleman of blood, (what have you said) nor God Almighty, but he can make a gentleman by creation. If you ask, which is the better of these two? civilly, the gentleman of blood ; morally, the gentleman by creation may be the better ; for the other may be a debauched man, this a person of worth.

2. Gentlemen have ever been more temperate in their religion than the common people, as having more reason, the others running in a hurry. In the

beginning of Christianity, the fathers writ *contra gentes*, and *contra Gentiles*—they were all one: but after all were Christians, the better sort of people still retained the name of Gentiles, throughout the four provinces of the Roman empire; as *gentil-homme* in French, *gentilhuomo* in Italian, *gentil-hombre* in Spanish, and *gentleman* in English: and they, no question, being persons of quality, kept up those feasts which we borrow from the Gentiles—as Christmas, Candlemas, May-day, &c. continuing what was not directly against Christianity, which the common people would never have endured.

GOLD.

There are two reasons why these words, *Jesus autem transiens per medium eorum ibat*, were about our old gold: the one is, because Riply, the alchymist, when he made gold in the Tower, the first time he found it, he spoke these words, *per medium eorum*, that is, *per medium ignis et sulphuris*; the other, because these words were thought to be a charm; and that they did bind whatsoever they were written upon, so that a man could not take it away. To this reason I rather incline.

HALL.

The hall was the place where the great lord used to eat; (wherefore else were the halls made so big?) where he saw all his servants and tenants about him: he eat not in private, except in time of sickness: when once he became a thing cooped up, all

his greatness was spoiled. Nay, the king himself used to eat in the hall, and his lords sat with him, and then he understood men.

HELL.

1. There are two texts for Christ's descending into hell: the one, Psalm xvi. the other, Acts ii. where the Bible that was in use when the 'Thirty-nine Articles were made, has it *hell*. But the Bible that was in queen Elizabeth's time, when the articles were confirmed, reads it *grave*; and so it continued till the New Translation in king James's time, and then it is *hell* again. But by this we may gather the church of England declined, as much as they could, the descent; otherwise they never would have altered the Bible.

2. "He descended into hell;" this may be the interpretation of it. He may be dead and buried, then his soul ascended into heaven. Afterwards, he descended again into hell, that is, into the grave, to fetch his body, and to rise again. The ground of this interpretation is taken from the Platonic learning, who held a metempsychosis; and when a soul did descend from heaven to take another body, they called it *καταβασιν εις ἀδην*, taking *ἀδης* for the lower world, the state of mortality. Now the first Christians many of them were Platonic philosophers, and no question spake such language as then was understood amongst them. To understand by *hell* the *grave*, is no tautology, because the creed first tells what Christ suffered, "he was crucified, dead, and buried;" then it tells us what he did,

“ he descended into hell, the third day he rose again, he ascended, &c.”

HOLYDAYS.

They say the church imposes holydays ; there is no such thing, though the number of holydays is set down in some of our Common Prayer Books. Yet that has relation to an act of parliament, which forbids the keeping of any holydays in time of popery ; but those that are kept, are kept by the custom of the country, and I hope you will not say the church imposes that.

HUMILITY.

1. Humility is a virtue all preach, none practise, and yet every body is content to hear. The master thinks it good doctrine for his servant, the laity for the clergy, and the clergy for the laity.

2. There is *humilitas quædam in vitio*. If a man does not take notice of that excellency and perfection that is in himself, how can he be thankful to God, who is the author of all excellency and perfection ? Nay, if a man hath too mean an opinion of himself, it will render him unserviceable both to God and man.

3. Pride may be allowed to this or that degree, else a man cannot keep up to his dignity. In gluttony there must be eating ; in drunkenness there must be drinking ; it is not the eating, nor it is not the drinking that is to be blamed, but the excess. So in pride.

IDOLATRY.

Idolatry is in a man's own thought, not in the opinion of another. Put case, I bow to the altar, why am I guilty of idolatry, because a stander by thinks so? I am sure I do not believe the altar to be God, and the God I worship may be bowed to in all places, and at all times.

JEWS.

1. God at the first gave laws to all mankind, but afterwards he gave peculiar laws to the Jews, which they were only to observe: just as we have the common law for all England; and yet you have some corporations, that, besides that, have peculiar laws and privileges to themselves.

2. Talk what you will of the Jews, that they are cursed, they thrive wherever they come; they are able to oblige the prince of their country by lending him money; none of them beg; they keep together; and for their being hated, my life for yours, Christians hate one another as much.

INVINCIBLE IGNORANCE.

It is all one to me if I am told of Christ, or some mystery of Christianity, if I am not capable of understanding, as if I am not told at all; my ignorance is as invincible: and therefore it is vain to call their ignorance only invincible, who never were told of Christ. The trick of it is to advance the priest,

whilst the church of Rome says a man must be told of Christ, by one thus and thus ordained.

IMAGES.

1. The Papists taking away the second commandment, is not haply so horrid a thing, nor so unreasonable amongst Christians as we make it: for the Jews could make no figure of God, but they must commit idolatry, because he had taken no shape; but since the assumption of our flesh, we know what shape to picture God in. Nor do I know why we may not make his image, provided we be sure what it is: as we say St. Luke took the picture of the Virgin Mary, and St. Veronica of our Saviour. Otherwise, it would be no honour to the king to make a picture, and call it the king's picture, when it is nothing like him.

2. Though the learned Papists pray not to images, yet it is to be feared the ignorant do; as appears by that story of St. Nicholas in Spain. A countryman used to offer daily to St. Nicholas's image: at length by mischance the image was broken, and a new one made of his own plum-tree; after that the man forbore. Being complained of to his ordinary, he answered—it is true, he used to offer to the old image, but to the new he could not find in his heart, because he knew it was a piece of his own plum-tree. You see what opinion this man had of the image; and to this tended the bowing of their images, the twinkling of their eyes, the Virgin's milk, &c. Had they only meant representations, a picture would have done as well as these tricks. It

may be with us in England they do not worship images ; because living amongst Protestants, they are either laughed out of it, or beaten out of it by shock of argument.

3. It is a discreet way concerning pictures in churches, to set up no new, nor to pull down no old.

IMPERIAL CONSTITUTIONS.

They say imperial constitutions did only confirm the canons of the church ; but that is not so, for they inflicted punishment, when the canons never did ; viz. if a man converted a Christian to be a Jew, he was to forfeit his estate, and lose his life. In Valentine's Novels it is said—*Constat episcopos forum legibus non habere, et judicant tantum de religione.*

IMPRISONMENT.

Sir Kenelm Digby was several times taken and let go again, at last imprisoned in Winchester-house. I can compare him to nothing but a great fish that we catch and let go again, but still he will come to the bait ; at last, therefore, we put him into some great pond for store.

INCENDIARIES.

Fancy to yourself a man sets the city on fire at Cripplegate, and that fire continues by means of others, till it comes to Whitefriars, and then he that began it would fain quench it ; does not he deserve

to be punished most that first set the city on fire? So it is with the incendiaries of the state. They that first set it on fire, (by monopolising, forest business, imprisoning parliament men, *tertio Caroli*, &c.) are now become regenerate, and would fain quench the fire : certainly they deserved most to be punished, for being the first cause of our distractions.

INDEPENDENCY.

1. Independency is in use at Amsterdam, where forty churches or congregations have nothing to do one with another : and it is no question agreeable to the primitive times, before the emperor became Christian : for either we must say every church governed itself, or else we must fall upon that old foolish rock, that St. Peter and his successors governed all ; but when the civil state became Christian, they appointed who should govern them, before they governed by agreement and consent. If you will not do this, you shall come no more amongst us ; but both the Independent man, and the Presbyterian man, do equally exclude the civil power, though after a different manner.

2. The Independent may as well plead, they should not be subject to temporal things, not come before a constable, or a justice of peace, as they plead they should not be subject in spiritual things ; because St. Paul says—" Is it so, that there is not a wise man amongst you ?"

3. The pope challenges all churches to be under him ; the king and the two archbishops challenge all the church of England to be under them. The

Presbyterian man divides the kingdom into as many churches as there be presbyteries, and your Independent would have every congregation a church by itself.

THINGS INDIFFERENT.

In time of a parliament, when things are under debate, they are indifferent ; but in a church or state settled, there is nothing left indifferent.

PUBLIC INTEREST.

All might go well in the commonwealth, if every one in the parliament would lay down his own interest, and aim at the general good. If a man were sick, and the whole college of physicians should come to him, and administer severally, haply so long as they observed the rules of art he might recover ; but if one of them had a great deal of scammony by him, he must put off that, therefore he prescribes scammony ; another had a great deal of rhubarb, and he must put off that, and therefore he prescribes rhubarb, &c.—they would certainly kill the man. We destroy the commonwealth, while we preserve our own private interests, and neglect the public.

HUMAN INVENTION.

1. You say there must be no human invention in the church, nothing but the pure word. *Answ.* If I give any exposition, but what is expressed in the text, that is my invention : if you give another ex-

position, that is your invention, and both are human. For example, suppose the word egg were in the text, I say, it is meant an hen-egg; you say, a goose-egg. Neither of these are expressed, therefore they are human inventions; and I am sure the newer the invention the worse; old inventions are best.

2. If we must admit nothing but what we read in the Bible, what will become of the parliament? For we do not read of that there.

JUDGMENTS.

We cannot tell what is a judgment of God; it is presumption to take upon us to know. In time of plague we know we want health, and therefore we pray to God to give us health; in time of war we know we want peace, and therefore we pray to God to give us peace. Commonly we say a judgment falls upon a man for something in him we cannot abide. An example we have in king James, concerning the death of Henry the Fourth of France; one said he was killed for his wenching, another said he was killed for turning his religion. "No," says king James, (who could not abide fighting) "he was killed for permitting duels in his kingdom."

JUDGE.

1. We see the pageants in Cheapside, the lions, and the elephants, but we do not see the men that carry them; we see the judges look big, look like lions, but we do not see who moves them.

2. Little things do great works, when great things will not. If I should take a pin from the ground, a little pair of tongs will do it, when a great pair will not. Go to a judge to do a business for you, by no means he will not hear of it ; but go to some small servant about him, and he will despatch it according to your heart's desire.

3. There could be no mischief done in the commonwealth without a judge. Though there be false dice brought in at the groom-porters, and cheating offered, yet, unless he allow the cheating, and judge the dice to be good, there may be hopes of fair play.

JUGGLING.

It is not juggling that is to be blamed, but much juggling, for the world cannot be governed without it. All your rhetoric, and all your elenchs in logic, come within the compass of juggling.

JURISDICTION.

1. There is no such thing as spiritual jurisdiction ; all is civil ; the church's is the same with the lord mayor's. Suppose a Christian came into a Pagan country, how can you fancy he shall have any power there ? He finds faults with the gods of the country ; well, they put him to death for it ; when he is a martyr, what follows ? Does that argue he has any spiritual jurisdiction ? If the clergy say the church ought to be governed thus and thus, by the word of God, that is doctrinal, that is not discipline.

2. The pope he challenges jurisdiction over all ; the bishops they pretend to it as well as he ; the Presbyterians they would have it to themselves : but over whom is all this ? The poor laymen.

JUS DIVINUM.

1. All things are held by *jus divinum*, either immediately or mediately.

2. Nothing has lost the pope so much in his supremacy, as not acknowledging what princes gave him. It is a scorn upon the civil power, and an unthankfulness in the priest. But the church runs to *jus divinum*, lest if they should acknowledge what they have by positive law, it might be as well taken from them as given to them.

KING.

1. A king is a thing men have made for their own sakes, for quietness sake : just as in a family one man is appointed to buy the meat ; if every man should buy, or if there were many buyers, they would never agree ; one would buy what the other liked not, or what the other had bought before ; so there would be a confusion. But that charge being committed to one, he, according to his discretion, pleases all ; if they have not what they would have one day, they shall have it the next, or something as good.

2. The word king directs our eyes. Suppose it had been consul, or dictator : to think all kings alike is the same folly, as if a consul of Aleppo or Smyrna should claim to himself the same power

as a consul at Rome, What, am not I a consul? Or a duke of England should think himself like the duke of Florence; nor can it be imagined, that the wore *Βασιλεως* did signify the same in Greek, as the Hebrew word *מלך* did with the Jews. Besides, let the divines in their pulpits say what they will, they in their practice deny that all is the king's. They see him, and so does all the nation, whereof they are a part. What matter is it then, what they preach or teach in the schools?

3. Kings are all individual, this or that king: there is no species of kings.

4. A king that claims privileges in his own country, because they have them in another, is just as a cook, that claims fees in one lord's house, because they are allowed in another. If the master of the house will yield them, well and good.

5. The text, "Render unto Cæsar the things that are Cæsar's," makes as much against kings as for them, for it says plainly that some things are not Cæsar's. But divines make choice of it, first in flattery, and then because of the other part adjoined to it, "Render unto God the things that are God's," where they bring in the church.

6. A king outed of his country, that takes as much upon him as he did at home, in his own court, is as if a man on high, and I being upon the ground, used to lift up my voice to him, that he might hear me; at length should come down, and then expects I should speak as loud to him as I did before.

KING OF ENGLAND.

1. The king can do no wrong; that is, no process can be granted against him: what must be done then? Petition him, and the king writes upon the petition *soit droit fait*, and sends it to the Chancery; and then the business is heard. His confessor will not tell him he can do no wrong.

2. There is a great deal of difference between head of the church, and supreme governor, as our canons call the king. Conceive it thus: there is in the kingdom of England a college of physicians; the king is supreme governor of those, but not head of them, nor president of the college, nor the best physician.

3. After the dissolution of abbeyes, they did not much advance the king's supremacy, for they only cared to exclude the pope; hence have we had several translations of the Bible put upon us. But now we must look to it, otherwise the king may put upon us what religion he pleases.

4. It was the old way when the king of England had his house, there were canons to sing service in his chapel; so at Westminster, in St. Stephen's chapel, where the house of commons sits, from which canons the street called Canon-row has its name, because they lived there; and he had also the abbot and his monks, and all these the king's house.

5. The three estates are the lords temporal, the bishops or the clergy, and the commons, as some would have it; (take heed of that) for then, if two agree, the third is involved, but he is king of the three estates.

6. The king hath a seal in every court; and though the great seal be called *sigillum Angliæ*, the great seal of England; yet it is not because it is the kingdom's seal, and not the king's; but to distinguish it from *sigillum Hiberniæ*, *sigillum Scotiæ*.

7. The court of Eugland is much altered. At a solemn dancing, first you had the grave measures, then the courantoes and the galliards; and this is kept up with ceremony: at length, to Frenchmore, and the cushion-dance; and then all the company dance, lord and groom, lady and kitchen-maid, no distinction. So in our court, in queen Elizabeth's time, gravity and state were kept up: in king James's time, things were pretty well: but in king Charles's time, there has been nothing but Frenchmore and the cushion-dance, *omnium gatherum*, tolly, polly, hoite-come-toite.

THE KING.

1. It is hard to make an accommodation between the king and the parliament. If you and I fell out about money—you said I owed you twenty pounds, I said I owed you but ten pounds—it may be, a third party, allowing me twenty marks, might make us friends. But if I said I owed you twenty pounds in silver, and you said I owed you twenty pounds in diamonds, which is a sum innumerable, it is impossible we should ever agree. This is the case.

2. The king using the house of commons, as he did in Mr. Pym and his company, that is, charging them with treason, because they charged my lord of Canterbury and sir George Ratcliff; it was just

with as much logic, as the boy, that would have lain with his grandmother, used to his father : “ You lie with my mother, why should not I lie with yours ? ”

3. There is not the same reason for the king’s accusing men of treason, and carrying them away, as there is for the houses themselves, because they accuse one of themselves : for every one that is accused, is either a peer or a commoner, and he that is accused hath his consent going along with him ; but if the king accuses, there is nothing of this in it.

4. The king is equally abused now as before : then they flattered him and made him do all things ; now they would force him against his conscience. If a physician should tell me, every thing I had a mind to was good for me, though in truth it was poison, he abused me ; and he abuses me as much, that would force me to take something whether I will or no.

5. The king, so long as he is our king, may do with his officers what he pleases ; as the master of the house may turn away all his servants, and take whom he please.

6. The king’s oath is not security enough for our property, for he swears to govern according to law. Now the judges they interpret the law, and what judges can be made to do we know.

7. The king and the parliament now falling out, are just as when there is foul play offered amongst gamesters : one snatches the other’s stake ; they seize what they can of one another’s. It is not to be asked whether it belongs not to the king to do this or that : before, when there was fair play, it

did ; but now they will do what is most convenient for their own safety. If two fall to scuffling, one tears the other's band, the other tears his ; when they were friends they were quiet, and did no such thing ; they let one another's bands alone.

8. The king calling his friends from the parliament, because he had use of them at Oxford, is as if a man should have use of a little piece of wood, and he runs down into the cellar, and takes the spigot ; in the mean time, all the beer runs about the house. When his friends are absent, the king will be lost.

KNIGHTS' SERVICE.

Knights' service, in earnest, means nothing ; for the lords are bound to wait upon the king when he goes to war with a foreign enemy, with, it may be, one man and one horse ; and he that doth not, is to be rated so much as shall seem good to the next parliament ; and what will that be ? So it is for a private man, that holds of a gentleman.

LAND.

1. When men did let their land underfoot, the tenants would fight for their landlords, so that way they had their retribution ; but now they will do nothing for them : may be the first, if but a constable bid them, that shall lay the landlord by the heels ; and therefore it is vanity and folly not to take the full value.

2. *Allodium* is a law word contrary to *feudum*, and it signifies land that holds of nobody. We have no such land in England. It is a true proposition, all the land in England is held, either immediately or mediately, of the king.

LANGUAGE.

1. To a living tongue new words may be added, but not to a dead tongue, as Latin, Greek, Hebrew, &c.

2. *Latimer* is the corruption of *Latiner*; it signifies he that interprets Latin: and though he interpreted French, Spanish, or Italian, he was called the king's *Latiner*, that is, the king's interpreter.

3. If you look upon the language spoken in the Saxon time, and the language spoken now, you will find the difference to be just as if a man had a cloak that he wore plain in queen Elizabeth's days, and since, here has put in a piece of red, and there a piece of blue, and here a piece of green, and there a piece of orange tawny. We borrow words from the French, Italian, Latin, as every pedantic man pleases.

4. We have more words than notions; half a dozen words for the same thing: sometimes we put a new signification to an old word, as when we call a *piece* a *gun*. The word *gun* was in use in England for an engine to cast a thing from a man, long before there was any gunpowder found out.

5. Words must be fitted to a man's mouth. It was well said of the fellow that was to make a speech for my lord mayor, he desired to take measure of his lordship's mouth.

LAW.

1. A man may plead not guilty, and yet tell no lie; for by the law no man is bound to accuse himself: so that when I say, *not guilty*, the meaning is, as if I should say by way of paraphrase, I am not so guilty as to tell you; if you will bring me to a trial,

and have me punished for this you lay to my charge, prove it against me.

2. Ignorance of the law excuses no man; not that all men know the law, but because it is an excuse every man will plead, and no man can tell how to confute him.

3. The king of Spain was outlawed in Westminster-hall, I being of counsel against him: a merchant had recovered costs against him in a suit, which because he could not get, we advised to have him outlawed for not appearing, and so he was: as soon as Gondimer heard that, he presently sent the money, by reason, if his master had been outlawed, he could not have the benefit of the law; which would have been very prejudicial, there being then many suits depending betwixt the king of Spain and our English merchants.

4. Every law is a contract between the king and the people, and therefore to be kept. A hundred men may owe me a hundred pounds, as well as any one man, and shall they not pay me because they are stronger than I? *Object.* O, but they lose all if they keep that law. *Answ.* Let them look to the making of their bargain. If I sell my lands, and when I have done, one comes and tells me, I have nothing else to keep me; I, and my wife, and children, must starve, if I part with my land—must I not, therefore, let them have my land that have bought it and paid for it?

5. The parliament may declare law, as well as any other inferior court may, *viz.* the king's bench. In that or this particular case, the king's bench will declare unto you what the law is; but that binds nobody whom the case concerns: so the highest

court, the parliament, may do, but not declare law ; that is, make law that was never heard of before.

LAW OF NATURE.

I cannot fancy to myself what the law of nature means, but the law of God : how should I know I ought not to steal, I ought not to commit adultery, unless somebody had told me so ? surely it is because I have been told so : it is not because I think I ought not to do them, nor because you think I ought not ; if so, our minds might change. Whence then comes the restraint ? from a higher power ; nothing else can bind. I cannot bind myself, for I may untie myself again : nor an equal cannot bind me, for we may untie one another. It must be a superior power, even God Almighty ! If two of us make a bargain, why should either of us stand to it ? what need you care what you say, or what need I care what I say ? certainly, because there is something about me that tells me *fides est servanda* ; and if we after alter our minds, and make a new bargain, there is *fides servanda* there too.

LEARNING.

1. No man is the wiser for his learning : it may administer matter to work in, or objects to work upon ; but wit and wisdom are born with a man.

2. Most men's learning is nothing but history duly taken up. If I quote Thomas Aquinas for some tenet, and believe it, because the schoolmen say so, that is but history. Few men make themselves masters of the things they write or speak.

3. The Jesuits and the lawyers of France, and

the Low Countrymen, have engrossed all learning : the rest of the world make nothing but homilies.

4. It is observable, that in Athens, where the arts flourished, they were governed by a democracy: learning made them think themselves as wise as any body, and they would govern as well as others; and they spake, as it were by way of contempt, that in the east and in the north they had kings; and why? because the most part of them followed their business; and if some one man had made himself wiser than the rest, he governed them, and they willingly submitted themselves to him. Aristotle makes the observation. And as in Athens the philosophers made the people knowing, and therefore they thought themselves wise enough to govern; so does preaching with us, and that makes us affect a democracy: for upon these two grounds we all would be governors; either because we think ourselves as wise as the best, or because we think ourselves the elect, and have the spirit, and the rest a company of reprobates that belong to the devil.

LECTURERS.

1. Lecturers do in a parish church what the friars did heretofore, get away not only the affections, but the bounty, that should be bestowed upon the minister. -

2. Lecturers get a great deal of money, because they preach the people tame, as a man watches a hawk; and then they do what they list with them.

3. The lectures in Blackfriars, performed by officers of the army, tradesmen, and ministers, is as if a great lord should make a feast, and he would have

his cook dress one dish, and his coachman another, his porter a third, &c.

LIBELS.

Though some may make slight of libels, yet you may see by them how the wind sits : as take a straw, and throw it up into the air, you shall see by that which way the wind is, which you shall not do by casting up a stone : more solid things do not show the complexion of the times so well as ballads and libels.

LITURGY.

1. There is no church without a liturgy, nor indeed can there be conveniently, as there is no school without a grammar. One scholar may be taught otherwise upon the stock of his acumen, but not a whole school : one or two that are piously disposed, may serve themselves their own way, but hardly a whole nation.

2. To know what was generally believed in all in all ages, the way is to consult the liturgies, not any private man's writings : as if you would know how the church of England serves God, go to the Common Prayer Book, consult not this nor that man : besides, liturgies never compliment, nor use high expressions. The fathers oftentimes speak oratoriously.

LORDS IN THE PARLIAMENT.

1. The lords giving protection is a scorn upon them : a protection means nothing actively, but passively ; he that is a servant to a parliament man is

thereby protected. What a scorn is it to a person of honour to put his hand to two lies at once, that such a man is my servant, and employed by me, when haply he never saw the man in his life, nor before never heard of him!

2. The lords' protesting is foolish: to protest is properly to save to a man's self some right; but to protest as the lords protest, when they themselves are involved, it is no more than if I should go into Smithfield, and sell my horse, and take the money; and yet when I have your money, and you my horse, I should protest this horse is mine, because I love the horse, or I do not know why I do protest, because my opinion is contrary to the rest. Ridiculous, when they say the bishops did anciently protest! it was only dissenting, and that in the case of the pope.

LORDS BEFORE THE PARLIAMENT.

1. Great lords, by reason of their flatterers, are the first that know their own virtues, and the last that know their own vices: some of them are ashamed upwards, because their ancestors were too great; others are ashamed downwards, because they were too little.

2. The prior of St. John of Jerusalem is said to be *primus baro Angliæ*, the first baron of England, because being last of the spiritual barons, he chose to be first of the temporal: he was a kind of an otter, a knight half spiritual, and half temporal.

3. *Quest.* Whether is every baron a baron of some place? *Answ.* It is according to his patent: of late years they have been made barons of some places,

but anciently not ; called only by their surname, or the surname of some family into which they have been married.

4. The making of new lords lessens all the rest. It is in the business of lords, as it was with St. Nicholas's image : the countryman, you know, could not find in his heart to adore the new image, made of his own plum-tree, though he had formerly worshipped the old one. The lords that are ancient we honour, because we know not whence they come ; but the new ones we slight, because we know their beginning.

5. For the Irish lords to take upon them here in England, is as if the cook in the fair should come to my lady Kent's kitchen, and take upon him to roast the meat there, because he is a cook in another place.

MARRIAGE.

1. Of all actions of a man's life, his marriage does least concern other people ; yet of all actions of our life it is most meddled with by other people.

2. Marriage is nothing but a civil contract : it is true, it is an ordinance of God : so is every other contract : God commands me to keep it when I have made it.

3. Marriage is a desperate thing. The frogs in Æsop were extreme wise ; they had a great mind to some water, but they would not leap into the well, because they could not get out again.

4. We single out particulars, and apply God's providence to them : thus when two are married and have undone one another, they cry, " It was

God's providence we should come together,"—when God's providence does equally concur to every thing.

MARRIAGE OF COUSIN-GERMANS.

Some men forbear to marry cousin-germans out of this kind of scruple of conscience: because it was unlawful before the reformation, and is still in the church of Rome; and so by reason their grandfather, or their great grandfather did not do it, upon that old score they think they ought not to do it; as some men forbear flesh upon Friday, not reflecting upon the statute, which with us makes it unlawful; but out of an old score, because the church of Rome forbids it, and their forefathers always forbore flesh upon that day. Others forbear it out of a natural consideration; because it is observed, for example, in beasts, if two couple of a near kind, the breed proves not so good; the same observation they make in plants and trees, which degenerate being grafted upon the same stock; and it is also farther observed, those matches between consin-germans seldom prove fortunate; but for the lawfulness there is no colour but cousin-germans in England may marry, both by the law of God and man: for with us we have reduced all the degrees of marriage to those in the Levitical law, and it is plain there is nothing against it. As for that that is said, cousin-germans once removed may not marry; and, therefore, being a farther degree may not, it is presumed a nearer should not—no man can tell what it means.

MEASURE OF THINGS.

1. We measure from ourselves, and as things are

for our use and purpose, so we approve them. Bring a pear to the table that is rotten, we cry it down, it is naught : but bring a medlar that is rotten, and it is a fine thing ; and yet I'll warrant you the pear thinks as well of itself as the medlar does.

2. We measure the excellency of other men by some excellency we conceive to be in ourselves.—Nash, a poet, poor enough, as poets used to be, seeing an alderman with his gold chain, upon his great horse, by way of scorn said to one of his companions, “Do you see yon fellow, how goodly, how big he looks? Why that fellow cannot make a blank verse.”

3. Nay, we measure the goodness of God from ourselves ; we measure his goodness, his justice, his wisdom, by something we call just, good, or wise in ourselves ; and in so doing, we judge proportionably to the country fellow in the play, who said, if he were a king, he would live like a lord, and have peas and bacon every day, and a whip that cried slash.

DIFFERENCE OF MEN.

The difference of men is very great ; you would scarce think them to be of the same species, and yet it consists more in the affection than in the intellect. For as in the strength of body, two men shall be of an equal strength, yet one shall appear stronger than the other, because he exercises, and puts out his strength ; the other will not stir nor strain himself ;—so it is in the strength of the brain ; the one endeavours, and strains, and labours, and studies ; the other sits still, and is idle, and takes no

pains, and therefore he appears so much the inferior.

MINISTER DIVINE.

1. The imposition of hands upon the minister, when all is done, will be nothing but a designation of a person to this or that office, or employment in the church. It is a ridiculous phrase, that of the canonists, *conferre ordines*; it is, *coaptare aliquem in ordinem*, to make a man one of us, one of our number, one of our order. So Cicero would understand what I said, it being a phrase borrowed from the Latin, and to be understood proportionably to what was amongst them.

2. Those words you now use in making a minister, “receive the Holy Ghost,” were used amongst the Jews in making of a lawyer: from thence we have them, which is a villanous key to something; as if you would have some other kind of prefature than a mayoralty, and yet keep the same ceremony that was used in making the mayor.

3. A priest has no such thing as an indelible character: what difference do you find betwixt him and another man after ordination? Only he is made a priest, as I said, by designation; as a lawyer is called to the bar, then made a serjeant. All men that would get power over others, make themselves as unlike them as they can; upon the same ground, the priests made themselves unlike the laity.

4. A minister when he is made is *materia prima*, apt for any form the state will put upon him, but of himself he can do nothing. Like a doctor of law

in the university, he hath a great deal of law in him, but cannot use it till he be made somebody's chancellor; or like a physician, before he be received into a house, he can give nobody physic; indeed, after the master of the house hath given him charge of his servants, then he may: or like a suffragan, that could do nothing but give orders, and yet he was no bishop.

5. A minister should preach according to the articles of religion established in the church where he is. To be a civil lawyer, let a man read Justinian, and the body of the law, to confirm his brain to that way; but when he comes to practise, he must make use of it so far as it concerns the law received in his own country. To be a physician, let a man read Galen and Hippocrates; but when he practises, he must apply his medicines according to the temper of those men's bodies with whom he lives, and have respect to the heat and cold of climes; otherwise, that which in Pergamus, where Galen lived, was physic, in our cold climate may be poison. So to be a divine, let him read the whole body of divinity, the fathers and the schoolmen; but when he comes to practise, he must use it, and apply it according to those grounds and articles of religion that are established in the church, and this with sense.

6. There be four things a minister should be at; the conscionary part, ecclesiastical story, school divinity, and the casuists.

1. In the conscionary part he must read all the chief fathers, both Latin and Greek, wholly: St. Austin, St. Ambrose, St. Chrysostom, both the Gregories, &c. Tertullian, Clemens Alexandri-

nus, and Epiphanius ; which last have more learning in them than all the rest, and writ freely.

II. For ecclesiastical story, let him read Baronius, with the Magdeburgenses, and be his own judge ; the one being extremely for the Papists, the other extremely against them.

III. For school divinity, let him get Javellus's edition of Scotus or Mayco, where there be quotations that direct you to every schoolman, where such and such questions are handled. Without school divinity, a divine knows nothing logically, nor will be able to satisfy a rational man out of the pulpit.

IV. The study of the casuists must follow the study of the schoolmen, because the division of their cases is according to their divinity ; otherwise he that begins with them will know little ; as he that begins with the study of the reports and cases in the common law, will thereby know little of the law. Casuists may be of admirable use, if discreetly dealt with, though among them you shall have many leaves together very impertinent. A case well decided would stick by a man ; they would remember it whether they will or no ; whereas, a quaint position dieth in the birth. The main thing is to know where to search ; for talk what they will of vast memories, no man will presume upon his own memory for anything he means to write or speak in public.

7. "Go and teach all nations." This was said to all Christians that then were, before the distinction of clergy and laity : there have been since men designed to preach only by the state, as some men are designed to study the law, others to study phy-

sic. When the Lord's Supper was instituted, there were none present but the disciples; shall none then but ministers receive?

8. There is all the reason you should believe your minister, unless you have studied divinity as well as he, or more than he.

9. It is a foolish thing to say ministers must not meddle with secular matters, because his own profession will take up the whole man: may he not eat, or drink, or walk, or learn to sing? The meaning of that is, he must seriously attend his calling.

10. Ministers with the Papists, that is, their priests, have much respect; with the Puritans, they have much; and that upon the same ground—they pretend both of them to come immediately from Christ; but with the Protestants, they have very little; the reason whereof is, in the beginning of the reformation, they were glad to get such to take livings as they could procure by any invitations, things of pitiful condition. The nobility and gentry would not suffer their sons or kindred to meddle with the church, and therefore at this day, when they see a parson, they think him to be such a thing still, and there they will keep him, and use him accordingly: if he be a gentleman, that is singled out, and he is used the more respectfully.

11. The protestant minister is least regarded, appears by the old story of the keeper of the clink. He had priests of several sorts sent unto him: as they came in, he asked them who they were. "Who are you?" to the first. "I am a priest of the church of Rome." "You are welcome," quoth the keeper; "there are those will take care of you." "And who are

you?" "A silenced minister." "You are welcome too; I shall fare the better for you." "And who are you?" "A minister of the church of England." "O God help me," quoth the keeper, "I shall get nothing by you, I am sure; you may lie and starve, and rot, before any body will look after you."

12. Methinks it is an ignorant thing for a churchman to call himself the minister of Christ, because St. Paul, or the apostles, called themselves so. If one of them had a voice from heaven, as St. Paul had, I will grant he is a minister of Christ, I will call him so too. Must they take upon them as the apostles did? Can they do as the apostles could? The apostles had a mark to be known by, spake tongues, cured diseases, trod upon serpents, &c. Can they do this? If a gentleman tells me he will send his man to me, and I did not know his man, but he gave me this mark to know him by, he should bring in his hand a rich jewel; if a fellow came to me with a pebble-stone, had I any reason to believe he was the gentleman's man?

MONEY.

1. Money makes a man laugh. A blind fiddler playing to a company, and playing but scurvily, the company laughed at him. His boy that led him, perceiving it, cried, "Father, let us be gone, they do nothing but laugh at you." "Hold thy peace, boy," said the fiddler, "we shall have their money presently, and then we will laugh at them."

2. Euclid was beaten in Boccaline,* for teaching

* See the *Ragguaglia di Parnasso*.

his scholars a mathematical figure in his school, whereby he showed, that all the lives both of princes and private men tended to one centre, *con gentilezza*, handsomely to get money out of other men's pockets, and it into their own.

3. The pope used heretofore to send the princes of Christendom to fight against the Turk; but prince and pope finely juggled together; the monies were raised, and some men went out to the holy war; but commonly after they had got the money, the Turk was pretty quiet, and the prince and the pope shared it between them.

4. In all times, the princes in England have done something illegal to get money; but then came a parliament, and all was well; the people and the prince kissed and were friends, and so things were quiet for a while: afterwards, there was another trick found out to get money, and after they had got it, another parliament was called to set all right, &c. But now they have so outrun the constable * * * * *

MORAL HONESTY.

They that cry down moral honesty, cry down that which is a great part of religion—my duty towards God, and my duty towards man. What care I to see a man run after a sermon, if he cozen and cheat as soon as he comes home? On the other side, morality must not be without religion; for if so, it may change, as I see convenience. Religion must govern it. He that has not religion to govern his morality, is not a dram better than my mastiff dog; so long as you stroke him and please him, and

do not pinch him, he will play with you as finely as may be ; he is a very good moral mastiff: but if you hurt him, he will fly in your face, and tear out your throat.

MORTGAGE.

In case I receive a thousand pounds, and mortgage as much land as is worth two thousand to you, if I do not pay the money at such a day, I fail—whether you may take my land and keep it in point of conscience? *Ans.* If you had my lands as security only for your money, then you are not to keep it ; but if we bargained so, that if I did not repay your one thousand pounds, my land should go for it, be it what it will, no doubt you may with a safe conscience keep it ; for in these things all the obligation is *servare fidem*.

NUMBER.

All those mysterious things they observe in numbers, come to nothing, upon this very ground ; because number in itself is nothing, has not to do with nature, but is merely of human imposition, a mere sound : for example, when I cry one o'clock, two o'clock, three o'clock, that is but man's division of time ; the time itself goes on, and it had been all one in nature if those hours had been called nine, ten, and eleven. So when they say the seventh son is fortunate, it means nothing ; for if you count from the seventh backwards, then the first is the seventh : why is not he likewise fortunate ?

OATHS.

1. Swearing was another thing with the Jews than with us, because they might not pronounce the name of the Lord Jehovah.

2. There is no oath scarcely, but we swear to things we are ignorant of. For example, the oath of supremacy; how many know how the king is king? What are his right and prerogative? So how many know what are the privileges of the parliament, and the liberty of the subject, when they take the protestation? But the meaning is, they will defend them when they know them: as if I should swear I would take part with all that wear red ribbons in their hats—it may be I do not know which colour is red—but when I do know, and see a red ribbon in a man's hat, then will I take his part.

3. I cannot conceive how an oath is imposed where there is a parity, *viz.* in the house of commons, they are all *pares inter se*; only one brings paper, and shows it the rest, they look upon it, and in their own sense take it. Now they are but *pares* to me, who am none of the house, for I do not acknowledge myself their subject; if I did, then no question, I was bound by an oath of their imposing. It is to me but reading a paper in their own sense.

4. There is a great difference between an assertory oath, and a promissory oath. An assertory oath is made to a man before God, and I must swear so, as man may know what I mean: but a promissory oath is made to God only, and I am sure he knows my

meaning. So in the new oath it runs, "Whereas, I believe in my conscience, &c. I will assist thus and thus." That "whereas," gives me an outloose; for if I do not believe so, for aught I know, I swear not at all.

5. In a promissory oath, the mind I am in is a good interpretation; for if there be enough happened to change my mind, I do not know why I should not. If I promise to go to Oxford tomorrow, and mean it when I say it, and afterwards it appears to me that it will be my undoing, will you say I have broke my promise if I stay at home? Certainly, I must not go.

6. The Jews had this way with them concerning a promissory oath or vow: if one of them had vowed a vow, which afterwards appeared to him to be very prejudicial, by reason of something he either did not foresee, or did not think of, when he made his vow; if he made it known to three of his countrymen, they had power to absolve him, though he could not absolve himself, and that they picked out of some words in the text. Perjury hath only to do with an assertory oath, and no man was punished for perjury by man's law till queen Elizabeth's time; it was left to God, as a sin against him: the reason was, because it was so hard a thing to prove a man perjured. I might misunderstand him, and he swears as he thought.

7. When men ask me whether they may take an oath in their own sense, it is to me, as if they should ask whether they may go to such a place upon their own legs; I would fain know how they can go otherwise.

8. If the ministers that are in sequestered livings will not take the engagement, threaten to turn

them out, and put in the old ones, and then I will warrant you they will quietly take it. A gentleman having been rambling two or three days, at length came home, and being in bed with his wife, would fain have been at something, that she was unwilling to, and instead of complying, fell to chiding him for his being abroad so long. "Well," says he, "if you will not, call up Sue," (his wife's chambermaid). Upon that she yielded presently.

9. Now oaths are so frequent, they should be taken like pills, swallowed whole; if you chew them, you will find them bitter; if you think what you swear, it will hardly go down.

ORACLES.

Oracles ceased presently after Christ, as soon as nobody believed them; just as we have no fortune-tellers, nor wise men, when nobody cares for them. Sometimes you have a season for them, when people believe them; and neither of these, I conceive, wrought by the devil.

OPINION.

1. Opinion and affection extremely differ: I may affect a woman best, but it does not follow, I must think her the handsomest woman in the world. I love apples best of any fruit; but it does not follow, I must think apples to be the best fruit. Opinion is something wherein I go about to give reason why all the world should think as I think. Affection is a thing wherein I look after the pleasing of myself.

2. It was a good fancy of an old Platonic—The gods which are above men, had something whereof

man did partake, (an intellect knowledge) and the gods kept on their course quietly: the beasts, which are below man, had something whereof man did partake, (sense and growth) and the beasts lived quietly in their way: but man had something in him, whereof neither gods nor beasts did partake, which gave him all the trouble, and made all the confusion in the world, and that is opinion.

3. It is a foolish thing for me to be brought off from an opinion in a thing neither of us know, but are led only by some cobweb-stuff, as in such a case as this, *utrum angeli invicem colloquantur*? If I forsake my side in such a case, I show myself wonderful light, or infinitely complying, or flattering the other party: but, if I be in a business of nature, and hold an opinion one way, and some man's experience has found out the contrary, I may with a safe reputation give up my side.

4. It is a vain thing to talk of an heretic; for a man for his heart can think no otherwise than he does think. In the primitive times, there were many opinions, nothing scarce but some or other held: one of these opinions being embraced by some prince, and received into his kingdom, the rest were condemned as heresies; and his religion, which was but one of the several opinions, first is said to be orthodox, and so have continued ever since the apostles.

PARITY.

This is the juggling trick of the parity; they would have nobody above them, but they do not tell you they would have nobody under them.

PARLIAMENT.

1. All are involved in a parliament. There was a time when all men had their voice in choosing knights. About Henry the Sixth's time they found the inconvenience; so one parliament made a law, that only he that had forty shillings per annum should give his voice, they under should be excluded. They made the law who had the voice of all, as well under forty shillings as above; and thus it continues at this day. All consent civilly in a parliament: women are involved in the men, children in those of perfect age; those that are under forty shillings a year, in those that have forty shillings a year; those of forty shillings, in the knights.

2. All things are brought to the parliament, little to the courts of justice; just as in a room where there is a banquet presented, if there be persons of quality there, the people must expect, and stay till the great ones have done.

3. The parliament flying upon several men, and then letting them alone, does as a hawk that flies a covey of partridges, and when she has flown them a great way, grows weary, and takes a tree; then the falconer lures her down, and takes her to his fist; on they go again, *heirett*, up springs another covey, away goes the hawk, and, as she did before, takes another tree, &c.

4. Dissenters in parliament may at length come to a good end, though first there be a great deal of do, and a great deal of noise, which mad wild folks make; just as in a brewing of wrest-beer, there is a great deal of business in grinding the malt, and

that spoils any man's clothes that comes near it ; then it must be mashed ; then comes a fellow in and drinks of the wort, and he is drunk ; then they keep a huge quarter when they carry it into the cellar ; and a twelvemonth after it is delicate fine beer.

5. It must necessarily be that our distempers are worse than they were in the beginning of the parliament. If a physician comes to a sick man, he lets him blood, it may be, scarifies him, cups him, puts him into a great disorder, before he makes him well : and if he be sent for to cure an ague, and he finds his patient hath many diseases, a dropsy, and a palsy, he applies remedies to them all, which makes the cure the longer and the dearer : this is the case.

6. The parliament men are as great princes as any in the world, when whatsoever they please is privilege of parliament ; no man must know the number of their privileges, and whatsoever they dislike is breach of privilege. The duke of Venice is no more than speaker of the house of commons ; but the senate at Venice are not so much as our parliament men, nor have they that power over the people ; who yet exercise the greatest tyranny that is any where. In plain truth, breach of privilege is only the actual taking away of a member of the house, the rest are offences against the house : for example, to take out process against a parliament man, or the like.

7. The parliament party, if the law be for them, they call for the law ; if it be against them, they will go to a parliamentary way ; if no law be for them,

then for law again : like him that first called for sack to heat him, then small drink to cool his sack, then sack again to heat his small drink, &c.

8. The parliament party do not play fair play, in sitting up till two of the clock in the morning, to vote something they have a mind to : it is like a crafty gamester that makes the company drunk, then cheats them of their money : young men and infirm men, go away ; besides, a man is not there to persuade other men to be of his mind, but to speak his own heart ; and if it be liked, so ; if not, there is an end.

PARSON.

1. Though we write *parson* differently, yet it is but *person* ; that is, the individual person set apart for the service of such a church, and it is in Latin *persona*, and *personatus* is a personage. Indeed, with the canon lawyers, *personatus* is any dignity or preferment in the church.

2. There never was a merry world since the fairies left dancing, and the parson left conjuring : the opinion of the latter kept thieves in awe, and did as much good in a country as a justice of peace.

PATIENCE.

Patience is the chiefest fruit of study. A man that strives to make himself a different thing from other men by much reading, gains this chiefest good, that in all fortunes he hath something to entertain and comfort himself withal.

PEACE.

1. King James was pictured going easily down a pair of stairs, and upon every step there was written, peace, peace, peace. The wisest way for men in these times is to say nothing.

2. When a country wench cannot get her butter to come, she says, the witch is in her churn. We have been churning for peace a great while, and it will not come : sure the witch is in it.

3. Though we had peace, yet it will be a great while ere things be settled : though the wind lie, yet after a storm the sea will work a great while.

PENANCE.

Penance is only the punishment inflicted—not penitence, which is the right word. A man comes not to do penance, because he repents him of his sin—but because he is compelled to it : he curses him, and could kill him that sends him thither. The old canons wisely enjoined three years' penance—sometimes more ; because, in that time, a man got a habit of virtue, and so committed that sin no more, for which he did penance.

PEOPLE.

1. There is not any thing in the world more abused than this sentence, *Salus populi suprema lex esto* ; for we apply it, as if we ought to forsake the known law, when it may be most for the advantage of the people, when it means no such thing. For,

first, it is not *Salus populi suprema lex est*, but *esto*, it being one of the laws of the Twelve Tables; and after divers laws made, some for punishment, some for reward, then follows this, *Salus populi suprema lex esto*; that is, in all the laws you make, have a special eye to the good of the people; and then what does this concern the way they now go?

2. *Objection.* He that makes one, is greater than he that is made; the people make the king, *ergo*, &c. *Answer.* This does not hold; for if I have one thousand pounds per annum, and give it to you, and leave myself never a penny, I made you; but when you have my land, you are greater than I. The parish makes the constable, and when the constable is made, he governs the parish. The answer to all these doubts is, Have you agreed so? If you have, then it must remain till you have altered it.

PLEASURE.

1. Pleasure is nothing else but the intermission of pain, the enjoying of something I am in great trouble for till I have it.

2. It is a wrong way to proportion other men's pleasures to ourselves: it is like a child's using a little bird, "O poor bird, thou shalt sleep with me;" so lays it in his bosom, and stifles it with his hot breath: the bird had rather be in the cold air. And yet, too, it is the most pleasing flattery, to like what other men like.

3. It is most undoubtedly true, that all men are equally given to their pleasures: only thus, one man's pleasure lies one way, and another's another. Pleasures are all alike, simply considered in themselves:

he that hunts, or he that governs the commonwealth—they both please themselves alike ; only we commend that, whereby we ourselves receive some benefit ; as if a man place his delight in things that tend to the common good. He that takes pleasure to hear sermons, enjoys himself as much as he that hears plays ; and could he that loves plays endeavour to love sermons, possibly he might bring himself to it as well as to any other pleasure : at first, it may seem harsh and tedious ; but afterwards, it would be pleasing and delightful. So it falls out in that, which is the great pleasure of some men—*tobacco* ; at first they could not abide it, and now they cannot be without it.

4. Whilst you are upon earth, enjoy the good things that are here, (to that end were they given) and be not melancholy, and wish yourself in heaven. If a king should give you the keeping of a castle, with all things belonging to it, orchards, gardens, &c. and bid you use them ; withal promise you that after twenty years to remove you to the court, and to make you a privy counsellor : if you should neglect your castle, and refuse to eat of those fruits, and sit down, and whine, and wish you were a privy counsellor, do you think the king would be pleased with you ?

5. Pleasures of meat, drink, clothes, &c. are forbidden those that know not how to use them, just as nurses cry *pah !* when they see a knife in a child's hand : they will never say any thing to a man.

PHILOSOPHY.

When men comfort themselves with philosophy, it is not because they have got two or three sentences, but because they have digested those sentences, and made them their own : so, upon the matter, philosophy is nothing but discretion.

POETRY.

1. Ovid was not only a fine poet, but, as a man may speak, a great canon lawyer, as appears in his *Fasti*, where we have more of the festivals of the old Romans than any where else : it is pity the rest are lost.

2. There is no reason plays should be in verse, either in blank or rhyme ; only the poet has to say for himself, that he makes something like that which somebody made before him. The old poets had no other reason but this—their verse was sung to music ; otherwise it had been a senseless thing to have fettered up themselves.

3. I never converted but two ; the one was Mr. Crashaw, from writing against plays, by telling him a way how to understand that place, of putting on women's apparel, which has nothing to do in the business ; as neither has it, that the fathers speak against plays in their time, with reason enough ; for they had real idolatries mixed with their plays, having three altars perpetually upon the stage. The other was a doctor of divinity, from preaching against painting, which simply in itself is no more

hurtful than putting on my clothes, or doing any thing to make myself like other folks, that I may not be odious nor offensive to the company : indeed if I do it with an ill intention, it alters the case ; so if I put on my gloves with an intention to do mischief, I am a villain.

4. It is a fine thing for children to learn to make verse ; but when they come to be men they must speak like other men, or else they will be laughed at. It is ridiculous to speak, or write, or preach in verse. As it is good to learn to dance ; a man may learn his leg, learn to go handsomely ; but it is ridiculous for him to dance when he should go.

5. It is ridiculous for a lord to print verses : it is well enough to make them to please himself, but to make them public is foolish. If a man, in a private chamber, twirls his band-strings, or plays with a rush to please himself, it is well enough ; but if he should go into Fleet-street, and sit upon a stall, and twirl a band-string, or play with a rush, then all the boys in the street would laugh at him.

6. Verse proves nothing but the quantity of syllables ; they are not meant for logic.

POPE.

1. A pope's bull and a pope's brief differ very much ; as with us, the great seal and the privy seal : the bull being the highest authority the king* can give—the brief is of less : the bull has a leaden seal upon silk, hanging upon the instrument ; the brief has *sub annulo piscatoris* upon the side.

* *Sic*, but qu. Pope ?

2. He was a wise pope, that, when one that used to be merry with him, before he was advanced to the popedom, refrained afterwards to come at him, presuming he was busy in governing the Christian world: the pope sends for him—bids him come again; “And,” says he, “we will be merry as we were before, for thou little thinkest what a little foolery governs the whole world.”

3. The pope in sending relics to princes, does as wenches do by their wassels at New-year's-tide; they present you with a cup, and you must drink of a slabby stuff; but the meaning is, you must give them monies, ten times more than it is worth.

4. The pope is infallible, where he hath power to command, that is, where he must be obeyed; so is every supreme power and prince: they that stretch his infallibility farther, do, they know not what.

5. When a Protestant and a Papist dispute, they talk like two madmen, because they do not agree upon their principles: the one way is, to destroy the pope's power; for if he hath power to command me, it is not my alleging reasons to the contrary, can keep me from obeying. For example, if a constable command me to wear a green suit to-morrow, and has power to make me, it is not my alleging a hundred reasons of the folly of it can excuse me from doing it.

6. There was a time when the pope had power here in England, and there was excellent use made of it; for it was only to serve turns, as might be manifested out of the records of the kingdom, which divines know little of. If the king did not like what the pope would have, he would forbid the pope's legate to land upon his ground: so that the power

was truly then in the king, though suffered in the pope. But now the temporal and the spiritual power (spiritual so called, because ordained to a spiritual end) spring both from one fountain, they are like to twist that.

7. The Protestants in France bear office in the state, because, though their religion be different, yet they acknowledge no other king but the king of France. The Papists in England they must have a king of their own—a pope, that must do something in our kingdom; therefore, there is no reason they should enjoy the same privileges.

8. Amsterdam admits of all religions but Papists, and it is upon the same account. The Papists, wherever they live, have another king at Rome; all other religions are subject to the present state, and have no prince elsewhere.

9. The Papists call our religion a parliamentary religion; but there was once, I am sure, a parliamentary pope. Pope Urban was made pope in England by act of parliament, against pope Clement: the act is not in the book of statutes, either because he that compiled the book, would not have the name of the pope there, or else he would not let it appear that they meddled with any such thing; but it is upon the rolls.

10. When our clergy preach against the pope, and the church of Rome, they preach against themselves; and crying down their pride, their power, and their riches, have made themselves poor and contemptible enough: they dedicate first to please their prince, not considering what would follow: just as if a man were to go a journey, and seeing at his first setting out the way clean and fair, ventures

forth in his slippers, not considering the dirt and the sloughs are a little farther off, or how suddenly the weather may change.

POPERY.

1. The demanding a noble, for a dead body passing through a town, came from hence in time of popery: they carried the dead body into the church, where the priest said dirges; and twenty dirges at fourpence a piece comes to a noble: but now it is forbidden by an order from my lord marshal; the heralds carry his warrant about them.

2. We charge the prelatical clergy with popery to make them odious, though we know they are guilty of no such thing: just as heretofore they called images Mammets, and the adoration of images Mammettry; that is, Mahomet and Mahometry, odious names, when all the world knows the Turks are forbidden images by their religion.

POWER. STATE.

1. There is no stretching of power: it is a good rule—Eat within your stomach; act within your commission.

2. They that govern most make least noise. You see when they row in a barge, they that do drudgery work, slash, and puff, and sweat; but he that governs, sits quietly at the stern, and scarcely is seen to stir.

3. Syllables govern the world.

4. *All power is of God*, means no more than *fides est servanda*. When St. Paul said this, the peo-

ple had made Nero emperor. They agree, he to command, they to obey ; then God comes in, and casts a hook upon them, *keep your faith* : then comes in, *all power is of God*. Never king dropped out of the clouds. God did not make a new emperor, as the king makes a justice of peace.

5. Christ himself was a great observer of the civil power, and did many things only justifiable, because the state required it, which were things merely temporary for the time that state stood. But divines make use of them to gain power to themselves ; as for example, that of *dic ecclesiæ*, tell the church : there was then a Sanhedrim, a court to tell it to ; and therefore, they would have it so now.

6. Divines ought to do no more than what the state permits : before the state became Christian, they made their own laws ; and those that did not observe them, they excommunicated, (naughty men) they suffered them to come no more amongst them ; but if they would come amongst them, how could they hinder them ? By what law ? By what power ? They were still subject to the state, which was heathen. Nothing better expresses the condition of Christians in those times, than one of the meetings you have in London, of men of the same country, of Sussex men, or Bedfordshire men ; they appoint their meeting, and they agree, and make laws amongst themselves ; (*He that is not there shall pay double, &c.*) and if any one misbehave himself, they shut him out of their company ; but can they recover a forfeiture made concerning their meeting by any law ? Have they any power to compel one to pay ? But afterwards, when the state became

Christian, all the power was in them, and they gave the church as much or as little as they pleased, and took away when they pleased, and added what they pleased.

7. The church is not only subject to the civil power with us that are protestants, but also in Spain; if the church does excommunicate a man for what it should not, the civil power will take him out of their hands : so in France, the bishop of Angiers altered something in the breviary ; they complained to the parliament at Paris, that made him alter it again, with a *comme abusé*.

8. The parliament of England has no arbitrary power in point of judicature, but in point of making law only.

9. If the prince be *servus naturæ*, of a servile base spirit, and the subjects *liberi*, free and ingenuous, oftentimes they depose their prince, and govern themselves : on the contrary, if the people be *servi naturæ*, and some one amongst them of a free and ingenuous spirit, he makes himself king of the rest ; and this is the cause of all changes in the state ; commonwealths into monarchies, and monarchies into commonwealths.

10. In a troubled state we must do as in foul weather upon the Thames ; not think to cut directly through, so the boat may be quickly full of water ; but rise and fall as the waves do, give as much as conveniently we can.

PRAYER.

1. If I were a minister, I should think myself most in my office, reading of prayers, and dispensing,

the sacraments : and it is ill done to put one to officiate in the church, whose person is contemptible out of it. Should a great lady, that was invited to be a gossip, in her place send her kitchen maid, it would be ill taken ; yet she is a woman as well as she : let her send her woman at least.

2. *You shall pray*, is the right way ; because, according as the church is settled, no man may make a prayer in public of his own head.

3. It is not the original Common Prayer Book. Why, show me an original Bible, or an original *Magna Charta*.

4. Admit the preacher prays by the spirit, yet that very prayer is common prayer to the people : they are tied as much to his words, as in saying, *Almighty and most merciful Father*. Is it then unlawful in the minister, but not unlawful in the people ?

5. There were some mathematicians, that could with one fetch of their pen make an exact circle, and with the next touch point out the centre : is it therefore reasonable to banish all use of the compasses ? Set forms are a pair of compasses.

6. *God hath given gifts unto men*. General texts prove nothing : let him show me John, William, or Thomas in the text, and then I will believe him. If a man hath a voluble tongue, we say, he hath the gift of prayer : his gift is to pray long, that I see ; but does he pray better ?

7. We take care what we speak to men, but to God we may say any thing.

8. The people must not think a thought towards God, but as their pastors will put it into their mouths : they will make right sheep of us.

9. The English priests would do that in English

which the Romish do in Latin—keep the people in ignorance ; but some of the people outdo them at their own game.

10 Prayer should be short, without giving God Almighty reasons why he should grant this or that : he knows best what is good for us. If your boy should ask you a suit of clothes, and give you reasons, (otherwise he cannot wait upon you, he cannot go abroad but he will discredit you) would you endure it? You know it better than he : let him ask a suit of clothes.

11. If a servant that has been fed with good beef, goes into that part of England where salmon is plenty, at first he is pleased with his salmon, and despises his beef; but after he has been there awhile, he grows weary of his salmon, and wishes for his good beef again. We have awhile been much taken with this praying by the spirit, but in time we may grow weary of it, and wish for our Common Prayer.

12. It is hoped we may be cured of our extemporary prayers the same way the grocer's boy is cured of his eating plums—when we have had our belly full of them.

PREACHING.

1. Nothing is more mistaken than that speech, *Preach the Gospel*; for it is not to make long harangues, as they do nowadays, but to tell the news of Christ's coming into the world : and when that is done, or where it is known already, the preacher's work is done.

2. Preaching, in the first sense of the word, ceased as soon as ever the gospels were written.

3. When the preacher says, This is the meaning of the Holy Ghost in such a place—in sense he can mean no more than this: that is, I, by studying of the place, by comparing one place with another, by weighing what goes before, and what comes after, think this is the meaning of the Holy Ghost; and, for shortness of expression, I say, the Holy Ghost says thus, or this is the meaning of the Spirit of God. So the judge speaks of the king's proclamation: This is the intention of the king—not that the king had declared his intention any other way to the judge; but the judge, examining the contents of the proclamation, gathers, by the purport of the words, the king's intention; and then, for shortness of expression, says, 'This is the king's intention.

4. Nothing is text but what was spoken in the Bible, and meant there for person and place; the rest is application, which a discreet man may do well; but it is his Scripture, not the Holy Ghost.

5. Preaching by the Spirit, as they call it, is most esteemed by the common people, because they cannot abide art or learning, which they have not been bred up in: just as in the business of fencing; if one country fellow amongst the rest, has been at school, the rest will undervalue his skill, or tell him he wants valour: You come with your school tricks; there is Dick Butcher has ten times more mettle in him: so they say to the preachers, You come with your school learning; there is such a one has the Spirit.

6. The tone in preaching does much in working upon the people's affections: if a man should make love in an ordinary tone, his mistress would not re-

gard him ; and, therefore, he must whine : if a man should cry fire, or murder, in an ordinary voice, nobody would come out to help him.

7. Preachers will bring any thing into the text. The young masters of arts preached against non-residency in the university ; whereupon the heads made an order, that no man should meddle with any thing but what was in the text. The next day one preached upon these words, *Abraham begat Isaac* ; when he had gone a good way, at last he observed, that Abraham was resident, for if he had been non-resident, he could never have begat Isaac ; and so fell foul upon the non-residents.

8. I could never tell what often preaching meant, after a church is settled, and we know what is to be done : it is just as if a husbandman should once tell his servants what they are to do, when to sow, when to reap ; and afterwards one should come, and tell them twice or thrice a day what they know already : You must sow your wheat in October, you must reap your wheat in August, &c.

9. The main argument why they would have two sermons a day is, because they have two meals a day ; the soul must be fed as well as the body : but I may as well argue, I ought to have two noses because I have two eyes, or two mouths because I have two ears. What have meals and sermons to do one with another ?

10. The things between God and man are but few, and those, forsooth, we must be told often of : but things between man and man are many ; those I hear not of above twice a year at the assizes, or once a quarter at the sessions : but few come then ; nor does the minister exhort the people to go at

these times to learn their duty towards their neighbour. Often preaching is sure to keep the minister in countenance, that he may have something to do.

11. In preaching they say more to raise men to love virtue than men can possibly perform, to make them do their best : as if you would teach a man to throw the bar ; to make him put out his strength, you bid him throw farther than it is possible for him, or any man else : throw over yonder house.

12. In preaching they do by men as writers of romances do by their chief knights, bring them into many dangers, but still fetch them off : so they put men in fear of hell ; but at last they bring them to heaven.

13. Preachers say, Do as I say, not as I do ; but if a physician had the same disease upon him that I have, and he should bid me do one thing, and he do quite another, could I believe him ?

14. Preaching the same sermon to all sorts of people, is, as if a schoolmaster should read the same lesson to his several forms : if he reads *Amo, amas, amavi*, the highest forms laugh at him ; the younger boys admire him : so it is in preaching to a mixed auditory. *Objection.* But it cannot be otherwise ; the parish cannot be divided into several forms. What must the preacher then do in discretion ? *Answ.* Why then let him use some expressions by which this or that condition of people may know such doctrine does more especially concern them, it being so delivered that the wisest may be content to hear ; for if he delivers it altogether, and leaves it to them to single out what belongs to themselves, which is the usual way, it is as if a man would bestow gifts upon children of several ages ; two years

old, four years old, ten years old, &c.; and there he brings tops, pins, points, ribbons, and casts them all in a heap together upon a table before them; though the boy of ten years old knows how to choose his top, yet the child of two years old, that should have a ribbon, takes a pin, and the pin, ere he be aware, pricks his fingers, and then all is out of order, &c. Preaching, for the most part, is the glory of the preacher, to show himself a fine man: catechising would do much better.

15. Use the best arguments to persuade, though but few understand; for the ignorant will sooner believe the judicious of the parish, than the preacher himself: and they teach when they dispute what he has said, and believe it the sooner, confirmed by men of their own side: for betwixt the laity and the clergy, there is, as it were, a continual driving of a bargain; something the clergy would still have us be at, and therefore many things are heard from the preacher with suspicion: they are afraid of some ends, which are easily assented to, when they have it from some of themselves. It is with a sermon as it is with a play; many come to see it, who do not understand it; and yet hearing it cried up by one, whose judgment they cast themselves upon, and of power with them, they swear, and will die in it, that it is a very good play, which they would not have done if the priest himself had told them so: as in a great school, it is the master that teaches all; the monitor does a great deal of work; it may be the boys are afraid to see the master; so in a parish it is not the minister does all; the greater neighbour teaches the lesser, the master of the house teaches his servant, &c.

16. First, in your sermons use your logic, and then your rhetoric : rhetoric without logic is like a tree with leaves and blossoms, but no root : yet I confess more are taken with rhetoric than logic, because they are caught with a free expression, when they understand not reason. Logic must be natural, or it is worth nothing at all. Your rhetoric figures may be learned. That rhetoric is best which is most seasonable and most catching : an instance we have in that old blunt commander at Cadiz, who showed himself a good orator : being to say something to his soldiers, which he was not used to do, he made them a speech to this purpose : “ What a shame will it be, you Englishmen, that feed upon good beef and brewess, to let those rascally Spaniards beat you, that eat nothing but oranges and lemons ;” and so put more courage into his men than he could have done with a more learned oration. Rhetoric is very good, or stark naught : there is no medium in rhetoric ; if I am not fully persuaded, I laugh at the orator.

17. It is good to preach the same thing again, for that is the way to have it learned. You see a bird by often whistling to learn a tune, and a month after record it to herself.

18. It is a hard case a minister should be turned out of his living for something they inform he should say in his pulpit : we can no more know what a minister said in his sermon by two or three words picked out of it, than we can tell what tune a musician played last upon the lute, by two or three single notes.

PREDESTINATION.

1. They that talk nothing but predestination, and will not proceed in the way of heaven till they be satisfied in that point, do, as a man that would not come to London, unless at his first step he might set his foot upon the top of St. Paul's.

2. For a young divine to begin in his pulpit with predestination, is, as if a man were coming into London, and at his first step would think to set his foot, &c.

3. Predestination is a point inaccessible, out of our reach ; we can make no notion of it, it is so full of intricacy, so full of contradiction ; it is in good earnest, as we state it, half-a-dozen bulls one upon another.

4. Doctor Prideaux, in his lectures, several days used arguments to prove predestination : at last tells his auditory they are damned that do not believe it ; doing herein just like schoolboys, when one of them has got an apple, or something the rest have a mind to, they use all the arguments they can to get some of it from them : I gave you some the other day ; you shall have some with me another time. When they cannot prevail, they tell him he is a jackanapes, a rogue, and a rascal.

PREFERMENT.

1. When you would have a child go to such a place, and you find him unwilling, you tell him he shall ride a cock-horse, and then he will go presently : so do those that govern the state deal by men, to

work them to their ends ; they tell them they shall be advanced to such or such a place, and they will do any thing they would have them.

2. A great place strangely qualifies. John Read, groom of the chamber to my lord of Kent, was in the right. Attorney Noy being dead, some were saying, "How will the king do for a fit man?" "Why, any man," says John Read, "may execute the place." "I warrant," says my lord, "thou thinkest thou understandest enough to perform it." "Yes," quoth John, "let the king make me attorney, and I would fain see that man, that durst tell me, there is any thing I understand not."

3. When the pageants are a coming there is a great thrusting, and a riding upon one another's backs, to look out at the window ; stay a little and they will come just to you, you may see them quietly. So it is when a new statesman or officer is chosen ; there is great expectation and listening who it should be ; stay awhile, and you may know quietly.

4. Missing preferment makes the presbyters fall foul upon the bishops. Men that are in hopes and in the way of rising, keep in the channel ; but they that have none, seek new ways : it is so amongst the lawyers ; he that hath the judge's ear, will be very observant of the way of the court ; but he that hath no regard, will be flying out.

5. My lord Digby having spoken something in the house of commons, for which they would have questioned him, was presently called to the upper house : he did by the parliament, as an ape when he hath done some waggery ; his master spies him, and he looks for his whip ; but before he can come

at him, "Whip," says he, "to the top of the house."

6. Some of the parliament were discontented, that they wanted places at court, which others had got; but when they had them once, then they were quiet: just as at a christening, some that get no sugar plums, when the rest have, mutter and grumble: presently the wench comes again with her basket of sugar-plums, and then they catch and scramble; and when they have got them, you hear no more of them.

PREMUNIRE.

There can be no premunire: a premunire, so called from the word *premunire facias*, was when a man laid an action in an ecclesiastical court, for which he could have no remedy in any of the king's courts, that is, in the courts of common law; by reason, the ecclesiastical courts, before Henry the Eighth, were subordinate to the pope; and so it was *contra coronam et dignitatem regis*; but now the ecclesiastical courts are equally subordinate to the king; therefore, it cannot be *contra coronam et dignitatem regis*, and so no premunire.

PREROGATIVE.

1. Prerogative is something that can be told what it is—not something that has no name: just as you see the archbishop has his prerogative court, but we know what is done in that court: so the king's prerogative is not his will, or what divines make it, a power to do what he lists.

2. The king's prerogative, that is, the king's law. For example, if you ask whether a patron may present to a living after six months by law? I answer, "No." If you ask whether the king may? I answer, "He may, by his prerogative;" that is, by the law that concerns him in that case.

PRESBYTERY.

1. They that would bring in a new government, would very fain persuade us, they meet it in antiquity; thus they interpret *presbyters*, when they meet the word in the fathers. Other professions likewise pretend to antiquity. The alchymist will find his art in Virgil's *aureus ramus*; and he that delights in optics will find them in Tacitus. When Cæsar came into England, they would persuade us they had perspective glasses, by which he could discover what they were doing upon the land, because it is said *positis speculis*: the meaning is—his watch, or his sentinel discovered this, and this unto him.

2. Presbyters have the greatest power of any clergy in the world, and gull the laity most. For example: admit there be twelve laymen to six presbyters, the six shall govern the rest as they please; first, because they are constant, and the others come in like churchwardens, in their turns, which is a huge advantage. Men will give way to them who have been in place before them. Next, the laymen have other professions to follow; the presbyters make it their sole business: and besides, too, they learn and study the art of persuading: some of Geneva have confessed as much.

3. The presbyter, with his elders about him, is like a young tree fenced about with two or three or four stakes ; the stakes defend it, and hold it up—but the tree only prospers and flourishes ; it may be some willow stake may bear a leaf or two, but it comes to nothing. Lay-elders are stakes, the presbyter the tree that flourishes.

4. When the queries were sent to the assembly, concerning the *jus divinum* of presbytery, their asking time to answer them, was a satire upon themselves ; for if it were to be seen in the text, they might quickly turn to the place, and show us it ; their delaying to answer, makes us think there is no such thing there. They do just as you have seen a fellow do at a tavern-reckoning ; when he should come to pay his reckoning, he puts his hands into his pockets, and keeps a grabbling and a fumbling, and shaking, at last tells you he has left his money at home, when all the company knew at first he had no money there, for every man can quickly find his own money.

PRIESTS OF ROME.

1. The reason of the statute against priests, was this : in the beginning of queen Elizabeth, there was a statute made, that he that drew men from their civil obedience was a traitor. It happened this was done in privacies and confessions, when there could be no proof : therefore, they made another act, that for a priest to be in England, was treason, because they presumed that was his business to fetch men off from their obedience.

2. When queen Elizabeth died, and king James came in, an Irish priest does thus express it : *Elizabetha in orcum detrusa, successit Jacobus, alter hereticus*. You will ask why they did use such language in their church ? *Answer*. Why does the nurse tell the child of raw-head and bloody-bones, to keep it in awe ?

3. The queen mother and count Rosset, are to the priests and Jesuits like the honey-pot to the flies.

4. The priests of Rome aim but at two things ; to get power from the king, and money from the subject.

5. When the priests come into a family, they do as a man that would set fire to a house ; he does not put fire to the brick wall, but thrusts it into the thatch. They work upon the women, and let the men alone.

6. For a priest to turn a man when he lies a dying, is just like one that hath a long time solicited a woman, and cannot obtain his end ; at length makes her drunk, and so lies with her.

PROPHECIES.

Dreams and prophecies do thus much good ; they make a man go on with boldness and courage upon a danger or a mistress : if he obtains, he attributes much to them ; if he miscarries, he thinks no more of them, or is no more thought of himself.

PROVERBS.

The proverbs of several nations were much studied by bishop Andrews, and the reason he gave, was,

because by them he knew the minds of several nations—which is a brave thing ; as we count him a wise man, that knows the minds and insides of men, which is done by knowing what is habitual to hem. Proverbs are habitual to a nation, being transmitted from father to son.

QUESTION.

When a doubt is propounded, you must learn to distinguish, and show wherein a thing holds, and wherein it does not hold : aye, or no, never answered any question. The not distinguishing where things should be distinguished—and the not confounding, where things should be confounded, is the cause of all the mistakes in the world.

REASON.

1. In giving reasons, men commonly do with us as the woman does with her child ; when she goes to market about her business, she tells it she goes to buy it a fine thing—to buy it a cake or some plums. They give us such reasons as they think we will be caught withal—but never let us know the truth.

2. When the schoolmen talk of *recta ratio* in morals, either they understand reason, as it is governed by a command from above—or else they say no more than a woman, when she says a thing is so, because it is so ; that is her reason persuades her it is so. The other exception has sense in it. As, take a law of the land, *I must not depopulate*, my

reason tells me so. Why? Because if I do, I incur the detriment.

3. The reason of a thing is not to be inquired after, till you are sure the thing itself be so. We commonly are at, *What is the reason of it?*—before we are sure of the thing. It was an excellent question of my lady Cotton, when sir Robert Cotton was magnifying of a shoe, which was Moses's or Noah's, and wondering at the strange shape and fashion of it: "But, Mr. Cotton," says she, "are you sure it is a shoe?"

RETALIATION.

An eye for an eye, and a tooth for a tooth. That does not mean, that if I put out another man's eye, therefore, I must lose one of my own; for what is he the better for that? (though this be commonly received) but it means, I shall give him what satisfaction an eye shall be judged to be worth.

REVERENCE.

It is sometimes unreasonable to look after respect and reverence, either from a man's own servant, or other inferiors. A great lord and a gentleman talking together, there came a boy by, leading a calf with both his hands: says the lord to the gentleman, "You shall see me make the boy let go his calf." With that he came towards him, thinking the boy would have put off his hat; but the boy took no notice of him. The lord seeing that, "Sirrah," says he, "do you not know me, that you use no

reverence?" "Yes," says the boy, "if your lordship will hold my calf, I will put off my hat."

NON-RESIDENCY.

1. The people thought they had a great victory over the clergy, when, in Henry the Eighth's time, they got their bill passed, "That a clergyman should have but two livings:" before a man might have twenty or thirty. It was but getting a dispensation from the pope's limiter, or gatherer of the Peter-pence, which was as easily got, as now you may have a licence to eat flesh.

2. As soon as a minister is made, he hath power to preach all over the world, but the civil power restrains him; he cannot preach in this parish, or in that; there is one already appointed. Now if the state allows him two livings, then he hath two places where he may exercise his function, and so has the more power to do his office; which he might do everywhere if he were not restrained.

RELIGION.

1. King James said to the fly, "Have I three kingdoms, and thou must needs fly into my eye?" Is there not enough to meddle with upon the stage, or in love, or at the table—but religion?

2. Religion amongst men appears to me like the learning they got at school. Some men forget all they learned, others spend upon the stock, and some improve it. So some men forget all the re-

ligion that was taught them when they were young, others spend upon that stock, and some improve it.

3. Religion is like the fashion ; one man wears his doublet slashed, another laced, another plain ; but every man has his doublet ; so every man has his religion : we differ about trimming.

4. Men say they are of the same religion, for quietness' sake ; but if the matter were well examined, you would scarce find three any where of the same religion in all points.

5. Every religion is a getting religion ; for though I myself get nothing, I am subordinate to those that do. So you may find a lawyer in the Temple that gets little for the present ; but he is fitting himself to be in time one of those great ones that do get.

6. Alteration of religion is dangerous, because we know not where it will stay : it is like a mill-stone that lies upon the top of a pair of stairs ; it is hard to remove it ; but if once it be thrust off the first stair, it never stays till it comes to the bottom.

7. *Question.* Whether is the church or the Scripture judge of religion ? *Ans.* In truth, neither ; but the state. I am troubled with a bile ; I call a company of chirurgeons about me ; one prescribes one thing, another another : I single out something I like, and ask you that stand by, and are no chirurgeon, what you think of it ? you like it too ; you and I are judges of the plaster, and we bid them prepare it, and there is an end. Thus it is in religion : the Protestants say they will be judged by the Scripture ; the Papists say so too ; but that cannot speak. A judge is no judge, except he can both speak and command execution ; but the truth is, they never intend to agree. No doubt the pope,

where he is supreme, is to be judge : if he say we in England ought to be subject to him, then he must draw his sword and make it good.

8. By the law was the manual received into the church before the Reformation ; not by the civil law—that had nothing to do in it ; nor by the canon law—for that manual that was here, was not in France, nor in Spain ; but by custom, which is the common law of England ; and custom is but the elder brother to a parliament ; and so it will fall out to be nothing that the Papists say, ours is a parliamentary religion, by reason the service-book was established by act of parliament, and never any service-book was so before. That will be nothing that the pope sent the manual : it was ours, because the state received it. The state still makes the religion, and receives into it what will best agree with it. Why are the Venetians Roman Catholics ? Because the state likes the religion. All the world knows they care not threepence for the pope. The council of Trent is not at this day admitted in France.

9. *Papist*. Where was your religion before Luther, a hundred years ago ? *Protestant*. Where was America a hundred or sixscore years ago ? Our religion was where the rest of the Christian church was. *Papist*. Our religion continued ever since the apostles, and therefore it is better. *Protestant*. So did ours. That there was an interruption of it, will fall out to be nothing, no more than if another earl should tell me of the earl of Kent, saying, He is a better earl than he, because there was one or two of the family of Kent did not take the title upon them ; yet all that while they were really earls ; and afterwards a great prince declared them to be

earls of Kent, as he that made the other family an earl.

10. Disputes in religion will never be ended, because there wants a measure by which the business would be decided. The Puritan would be judged by the word of God; if he would speak clearly, he means himself, but he is ashamed to say so; and he would have me believe him before a whole church, that has read the word of God as well as he. One says one thing, and another another: and there is, I say, no measure to end the controversy. It is just as if two men were at bowls, and both judged by the eye; one says it is his cast, the other says it is my cast; and having no measure, the difference is eternal. Ben Jonson satirically expressed the vain disputes of divines, by Inigo Lanthorne, disputing with his puppet in a Bartholomew fair: "It is so;" "it is not so:" "it is so;" "it is not so:" crying thus, one to another, a quarter of an hour together.

11. In matters of religion to be ruled by one that writes against his adversary, and throws all the dirt he can in his face, is, as if in point of good manners a man should be governed by one whom he sees at cuffs with another, and thereupon thinks himself bound to give the next man he meets a box on the ear.

12. It is to no purpose to labour to reconcile religions, when the interest of princes will not suffer it. It is well if they could be reconciled so far, that they should not cut one another's throats.

13. There is all the reason in the world divines should not be suffered to go a hair beyond their bounds, for fear of breeding confusion, since there

now be so many religions on foot. The matter was not so narrowly to be looked after when there was but one religion in Christendom ; the rest would cry him down for an heretic, and there was nobody to side with him.

14. We look after religion as the butcher did after his knife, when he had it in his mouth.

15. Religion is made a juggler's paper ; now it is a horse, now it is a lantern, now it is a boar, now it is a mau. To serve ends, religion is turned into all shapes.

16. Pretending religion and the law of God, is to set all things loose : when a man has no mind to do something, he ought to do by his contract with man, then he gets a text, and interprets it as he pleases, and so thinks to get loose.

17. Some men's pretending religion, is like the roaring boys' way of challenges ; " their reputation is dear, it does not stand with the honour of a gentleman ;" when, God knows, they have neither honour nor reputation about them.

18. They talk much of settling religion : religion is well enough settled already, if we would let it alone. Methinks we might look after, &c.

19. If men would say they took arms for any thing but religion, they might be beaten out of it by reason ; out of that they never can, for they will not believe you whatever you say.

20. The very arcanum of pretending religion in all wars is, that something may be found out in which all men may have interest. In this the groom has as much interest as the lord. Were it for land, one has a thousand acres, and the other but one ; he would not venture so far as he that has

a thousand : but religion is equal to both. Had all men land alike, by a *lex agraria*, then all men would say they fought for land.

SABBATH.

Why should I think all the fourth commandment belongs to me, when all the fifth does not ? What land will the Lord give me for honouring my father ? It was spoken to the Jews with reference to the land of Canaan ; but the meaning is, if I honour my parents, God will also bless me. We read the commandments in the church service, as we do David's Psalms, not that all there concerns us, but a great deal of them does.

SACRAMENT.

1. Christ suffered Judas to take the communion. Those ministers that keep their parishioners from it, because they will not do as they will have them, revenge, rather than reform.

2. No man can tell whether I am fit to receive the sacrament ; for though I were fit the day before, when he examined me, at least appeared so to him ; yet how can he tell what sin I have committed that night, or the next morning, or what impious atheistical thoughts I may have about me, when I am approaching to the very table ?

SALVATION.

We can best understand the meaning of *σωτηρια*, salvation, from the Jews, to whom the Saviour was

promised. They held that themselves should have the chief place of happiness in the other world ; but the Gentiles, that were good men, should likewise have their portion of bliss there too. Now by Christ the partition-wall is broken down, and the Gentiles that believe in him, are admitted to the same place of bliss with the Jews : and why then should not that portion of happiness still remain to them who do not believe in Christ, so they be morally good ? This is a charitable opinion.

STATE.

In a troubled state save as much for your own as you can. A dog had been at market to buy a shoulder of mutton ; coming home he met two dogs by the way, that quarrelled with him ; he laid down his shoulder of mutton, and fell to fighting with one of them ; in the mean time the other dog fell to eating his mutton. He seeing that, left the dog he was fighting with, and fell upon him that was eating ; then the other dog fell to eat : when he perceived there was no remedy, but which of them soever he fought withal, his mutton was in danger, he thought he would have as much of it as he could, and thereupon gave over fighting, and fell to eating himself.

SUPERSTITION.

1. They that are against superstition, oftentimes run into it of the wrong side. If I will wear all colour but black, then am I superstitious in not wearing black.

2. They pretend not to abide the cross because it is superstitious : for my part, I will believe them, when I see them throw their money out of their pockets, and not till then.

3. If there be any superstition truly and properly so called, it is their observing the Sabbath after the Jewish manner.

SUBSIDIES.

1. Heretofore the parliament was wary what subsidies they gave to the king, because they had no account ; but now they care not how much they give of the subjects' money, because they give it with one hand, and receive it with the other ; and so upon the matter give it themselves. In the mean time what a case the subjects of England are in ! if the men they have sent to the parliament misbehave themselves, they cannot help it, because the parliament is eternal.

2. A subsidy was counted the fifth part of a man's estate, and so fifty subsidies is five-and-forty times more than a man is worth.

SIMONY.

The name of simony was begot in the canon law ; the first statute against it was in queen Elizabeth's time. Since the Reformation, simony has been frequent : one reason why it was not practised in time of popery, was the pope's provision ; no man was sure to bestow his own benefice.

SHIP-MONEY.

1. Mr. Noy brought in ship-money first for maritime towns ; but that was like putting in a little auger, that afterwards you may put in a greater. He that pulls down the first brick, does the main work ; afterwards it is easy to pull down the wall.

2. They that at first would not pay ship-money till it was decided, did like brave men, though perhaps they did no good by the trial ; but they that stand out since, and suffer themselves to be distressed, never questioning those that do it, do pitifully, for so they only pay twice as much as they should.

SYNOD ASSEMBLY.

1. We have had no national synod since the kingdom hath been settled, as now it is, only provincial : and there will be this inconveniency, to call so many divines together ; it will be to put power in their hands, who are too apt to usurp it, as if the laity were bound by their determination : no, let the laity consult with divines on all sides, hear what they say, and make themselves masters of their reasons ; as they do by any other profession, when they have a difference before them : for example, goldsmiths ; they inquire of them, if such a jewel be of such a value, and such a stone of such a value, hear them, and then, being rational men, judge themselves.

2. Why should you have a synod, when you have a convocation already, which is a synod ? Would you

have a superfetation of another synod ? The clergy of England, when they cast off the pope, submitted themselves to the civil power, and so have continued ; but these challenge to be *jure divino*, and so to be above the civil power : these challenge power to call before their presbyteries all persons for all sins directly against the law of God, as proved to be sins by necessary consequence. If you would buy gloves, send for a glover or two, not Glover's-hall ; consult with some divines, not send for a body.

3. There must be some laymen in the synod, to overlook the clergy, lest they spoil the civil work ; just as when the good woman puts a cat into the milk-house to kill a mouse, she sends her maid to look after the cat, lest the cat should eat up the cream.

4. In the ordinance for the assembly, the lords and commons go under the names of learned, godly, and judicious divines ; there is no difference put betwixt them and the ministers in the context.

5. It is not unusual in the assembly to revoke their votes, by reason they make so much haste, but it is that will make them scorned. You never heard of a council revoked an act of its own making ; they have been wary in that, to keep up their infallibility ; if they did anything, they took away the whole council, and yet we would be thought infallible as any body. It is not enough to say, the house of commons revoke their votes, for theirs are but civil truths which they by agreement create and uncreate, as they please : but the truths the synod deals in are divine ; and when they have voted a thing, if it be then true, it was true before ; not true

because they voted it, nor does it cease to be true because they voted otherwise.

6. Subscribing in a synod, or to the articles of a synod, is no such terrible thing as they make it; because, if I am of a synod, it is agreed, either tacitly or expressly. That which the major part determines, the rest are involved in; and therefore I subscribe, though my own private opinion be otherwise; and upon the same ground, I may, without scruple, subscribe to what those have determined, whom I sent, though my private opinion be otherwise; having respect to that which is the ground of all assemblies, the major part carries it.

THANKSGIVING.

At first we gave thanks for every victory as soon as ever it was obtained, but since we have had many now, we can stay a good while. We are just like a child; give him a plum, he makes his leg; give him a second plum, he makes another leg: at last, when his belly is full, he forgets what he ought to do; then his nurse, or somebody else that stands by him, puts him in mind of his duty, "Where is your leg?"

TITHES.

1. Tithes are more paid in kind in England, than in all Italy and France. In France, they have had impropriations a long time; we had none in England till Henry the Eighth.

2. To make an impropriation, there was to be the consent of the incumbent, the patron, and the

king ; then it was confirmed by the pope. Without all this the pope could make no impropriation.

3. Or what if the pope gave the tithes to anyman, must they therefore be taken away ? If the pope gives me a jewel, will you therefore take it away from me ?

4. Abraham paid tithes to Melchizedec ; what then ? It was very well done of him. It does not follow therefore that I must pay tithes, no more than I am bound to imitate any other action of Abraham's.

5. It is ridiculous to say the tithes are God's part, and therefore the clergy must have them : why, so they are if the layman has them. It is as if one of my lady Kent's maids should be sweeping this room, and another of them should come and take away the broom, and tell for a reason why she should part with it, " It is my lady's broom : " as if it were not my lady's broom, which of them soever had it.

6. They consulted in Oxford where they might find the best argument for their tithes, setting aside the *jus divinum* : they were advised to my History of Tithes—a book so much cried down by them formerly ; in which I dare boldly say, there are more arguments for them than are extant together any where : upon this, one writ me word, that my History of Tithes was now become like Pelens's *Hasta*, to wound and to heal. I told him, in my answer, I thought I could fit him with a better instance : it was possible it might undergo the same fate that Aristotle, Avicen, and Averroes did in France, some five hundred years ago ; which were excommunicated by Stephen, bishop of Paris, (by that very name, excommunicated) because that kind of learn-

ing puzzled and troubled their divinity: but finding themselves at a loss, some forty years after, which is much about the time since I writ my history, they were called in again, and so have continued ever since.

TRADE.

1. There is no prince in Christendom but is directly a tradesman, though in another way than an ordinary tradesman. For the purpose, I have a man; I bid him lay out twenty shillings in such commodities, but I tell him for every shilling he lays out I will have a penny: I trade as well as he. This every prince does in his customs.

2. That which a man is bred up in, he thinks no cheating; as your tradesman thinks not so of his profession, but calls it a mystery: whereas, if you would teach a mercer to make his silks heavier than what he has been used to, he would peradventure think that to be cheating.

3. Every tradesman professes to cheat me, that asks for his commodity twice as much as it is worth.

TRADITION.

Say what you will against tradition, we know the signification of words by nothing but tradition. You will say the Scripture was written by the Holy Spirit; but do you understand that language it was writ in? No. Then, for example, take these words, *In principio erat verbum*. How do you know those words signify—"In the beginning was the word,"—but by tradition; because somebody has told you so?

TRANSUBSTANTIATION.

1. The fathers using to speak rhetorically, brought up transubstantiation ; as if, because it is commonly said, *Amicus est alter idem*, one should go about to prove a man and his friend are all one. That opinion is only rhetoric turned into logic.

2. There is no greater argument, though not used, against transubstantiation, than the apostles, at their first council, forbidding blood and suffocation. Would they forbid blood, and yet enjoin the eating of blood too ?

3. The best way for a pious man, is to address himself to the sacrament with that reverence and devotion, as if Christ were really there present.

TRAITOR.

It is not seasonable to call a man traitor that has an army at his heels. One with an army is a gallant man. My lady Cotton was in the right, when she laughed at the duchess of Richmond for taking such state upon her, when she could command no forces. “She a duchess ! there is in Flanders a duchess indeed ;” meaning the arch-duchess.

TRINITY.

The second person is made of a piece of bread by the Papist, the third person is made of his own frenzy, malice, ignorance, and folly, by the round-head. To all these, the Spirit is intitled. One the baker makes ; the other the cobbler ; and be-

twixt those two, I think the first person is sufficiently abused.

TRUTH.

1. The Aristotelians say, All truth is contained in Aristotle in one place or another. Galileo makes Simplicius say so, but shows the absurdity of that speech, by answering, "All truth is contained in a lesser compass;" *viz.* in the alphabet. Aristotle is not blamed for mistaking sometimes; but Aristotelians for maintaining those mistakes. They should acknowledge the good they have from him, and leave him when he is in the wrong. There never breathed that person to whom mankind was more beholden.

2. The way to find out the truth is by others' mistakings: for if I was to go to such a place, and one had gone before me on the right-hand, and he was out; another had gone on the left-hand, and he was out; this would direct me to keep the middle way, that peradventure would bring me to the place I desired to go.

3. In troubled water, you can scarce see your face, or see it very little, till the water be quiet and stand still: so in troubled times you can see little truth; when times are quiet and settled, then truth appears.

TRIAL.

1. Trials are by one of these three ways; by confession, or by demurrer; that is, confessing the fact, but denying it to be that wherewith a man is

charged : for example, denying it to be treason, if a man be charged with treason ; or by a jury.

2. *Ordalium* was a trial ; and was either by going over nine red hot ploughshares, (as in the case of queen Emma, accused for lying with the bishop of Winchester, over which she being led blindfold, and having passed all her irons, asked when she should come to her trial ;) or it was by taking a red hot coulter in a man's hand, and carrying it so many steps, and then casting it from him : as soon as this was done, the hands or the feet were to be bound up, and certain charms to be said, and a day or two after to be opened ; if the parts were whole, the party was judged to be innocent ; and so on the contrary.

3. The rack is used no where as in England : in other countries it is used in judicature, when there is a *sempilena probatio*, a half proof against a man ; then to see if they can make it full, they rack him if he will not confess : but here in England they take a man and rack him, I do not know why, nor when ; not in time of judicature, but when somebody bids.

4. Some men, before they come to their trial, are cozened to confess upon examination : upon this trick, they are made to believe somebody has confessed before them ; and then they think it a piece of honour to be clear and ingenuous, and that destroys them.

UNIVERSITY.

1. The best argument why Oxford should have precedence of Cambridge is the act of parliament,

by which Oxford is made a body ; made what it is ; and Cambridge is made what it is ; and in the act it takes place. Besides, Oxford has the best monuments to show.

2. It was well said of one, hearing of a history lecture to be founded in the university ; “ Would to God,” says he, “ they would direct a lecture of discretion there ! this would do more good there a hundred times.

3. He that comes from the university to govern the state, before he is acquainted with the men and manners of the place, does just as if he should come into the presence chamber all dirty, with his boots on, his riding coat, and his head all daubed. They may serve him well enough in the way, but when he comes to court, he must conform to the place.

VOWS.

Suppose a man find by his own inclination he has no mind to marry, may he not then vow chastity ?
Answ. If he does, what a fine thing hath he done ? It is as if a man did not love cheese ; and then he would vow to God Almighty never to eat cheese. He that vows can mean no more in sense than this ; to do his utmost endeavour to keep his vow.

USURY.

1. The Jews were forbidden to take use one of another, but they were not forbidden to take it of other nations : that being so, I see no reason why I may not as well take use for my money, as rent for my house. It is a vain thing

to say, money begets not money ; for that no doubt it does.

2. Would it not look oddly to a stranger, that should come into this land, and hear in our pulpits usury preached against, and yet the law allow it ? Many men use it ; perhaps some churchmen themselves. No bishop nor ecclesiastical judge, that pretends power to punish other faults, dares punish, or at least does punish, any man for doing it.

PIOUS USES.

The ground of the ordinary's taking part of a man's estate, who died without a will, to pious uses, was this : to give it somebody to pray that his soul might be delivered out of purgatory : now the pious uses come into his own pocket. It was well expressed by John o' Powls in the play, who acted the priest : one that was to be hanged, being brought to the ladder, would fain have given something to the poor ; he feels for his purse, which John o' Powls had picked out of his pocket before : missing it, cries out, he had lost his purse. Now he intended to have given something to the poor : John o' Powls bid him be pacified, for the poor had it already.

WAR.

1. Do not undervalue an enemy by whom you have been worsted. When our countrymen came home from fighting with the Saracens, and were beaten by them, they pictured them with huge, big, terrible faces, as you still see the sign of the Sara-

cen's head is, when in truth they were like other men : but this they did to save their own credits.

2. Martial law, in general, means nothing but the martial law of this or that place : with us to be used in *fervore belli*, in the face of the enemy, not in time of peace ; there they can take away neither limb nor life : the commanders need not complain for want of it, because our ancestors have done gallant things without it.

3. *Quest.* Whether may subjects take up arms against their prince ? *Answ.* Conceive it thus : here lies a shilling betwixt you and me ; tenpence of the shilling is yours, twopence is mine : by agreement, I am as much king of my twopence, as you of your tenpence : if you, therefore, go about to take away my twopence, I will defend it : for there you and I are equal, both princes.

4. Or thus : two supreme powers meet ; one says to the other, " Give me your land ; if you will not, I will take it from you." The other, because he thinks himself too weak to resist him, tells him : " Of nine parts I will give you three ; so I may quietly enjoy the rest, and I will become your tributary." Afterwards the prince comes to exact six parts, and leaves but three : the contract then is broken, and they are in parity again.

5. To know what obedience is due to the prince, you must look into the contract betwixt him and his people ; as if you would know what rent is due from the tenant to the landlord, you must look into the lease : when the contract is broken, and there is no third person to judge, then the decision is by arms ; and this is the case between the prince and the subject.

6. *Quest.* What law is there to take up arms against the prince, in case he break his covenant?

Answ. Though there be no written law for it, yet there is custom, which is the best law of the kingdom; for in England they have always done it. There is nothing expressed between the king of England and the king of France, that if either invades the other's territory, the other shall take up arms against him; and yet they do it upon such an occasion.

7. It is all one to be plundered by a troop of horse, or to have a man's goods taken from him by an order from the council table. To him that dies, it is all one whether it be by a penny halter, or a silk garter; yet I confess the silk garter-pleases more; and like trouts, we love to be tickled to death.

8. The soldiers say they fight for honour; when the truth is, they have their honour in their pocket; and they mean the same thing that pretend to fight for religion: just as a parson goes to law with his parishioners, he says, for the good of his successors, that the church may not lose its right; when the meaning is, to get the tithes into his own pocket.

9. We govern this war as an unskilful man does a casting-net: if he has not the right trick to cast the net off his shoulder, the leads will pull him into the river. I am afraid we shall pull ourselves into destruction.

10. We look after the particulars of a battle, because we live in the very time of war; whereas of battles past, we hear nothing but the number slain. Just as for the death of a man, when he is sick, we talk how he slept this night, and that night; what he eat, and what he drank: but when he is

dead, we only say, he died of a fever, or name his disease ; and there is an end.

11. Boccaline has this passage of soldiers : they came to Apollo to have their profession made the eighth liberal science, which he granted. As soon as it was noised up and down, it came to the butchers, and they desired their profession might be made the ninth ; “ for,” say they, “ the soldiers have this honour for the killing of men : now we kill as well as they ; but we kill beasts for the preserving of men, and why should not we have honour likewise done us ?” Apollo could not answer their reasons, so he reversed his sentence, and made the soldier’s trade a mystery, as the butcher’s is.

WITCHES.

The law against witches does not prove there be any ; but it punishes the malice of those people, that use such means to take away men’s lives : if one should profess that by turning his hat thrice, and crying buz, he could take away a man’s life, though in truth he could do no such thing : yet this were a just law made by the state, that whosoever should turn his hat thrice, and cry buz, with an intention to take away a man’s life, shall be put to death.

WIFE.

1. He that hath a handsome wife, by other men is thought happy : it is a pleasure to look upon her, and be in her company ; but the husband is cloyed with her : we are never content with what we have.

2. You shall see a monkey sometimes, that has

been playing up and down the garden, at length leap up to the top of the wall, but his clog hangs a great way below on this side. The bishop's wife is like that monkey's clog: himself is got up very high, takes place of the temporal barons, but his wife comes a great way behind.

3. It is reason, a man that will have a wife should be at the charge of her trinkets, and pay all the scores she sets on him: he that will keep a monkey, it is fit he should pay for the glasses he breaks.

WISDOM.

1. A wise man should never resolve upon any thing, at least never let the world know his resolution: for if he cannot arrive at that, he is ashamed. How many things did the king resolve in his declaration concerning Scotland, never to do, and yet did them all? A man must do according to accidents and emergencies.

2. Never tell your resolution beforehand: but when the cast is thrown, play it as well as you can to win the game you are at: it is but folly to study how to play size-ace, when you know not whether you shall throw it or no.

3. Wise men say nothing in dangerous times. The lion, you know, called the sheep, to ask her if his breath smelled: she said, Aye; he bit off her head for a fool. He called the wolf, and asked him: he said, No; he tore him in pieces for a flatterer. At last he called the fox, and asked him: truly, he had got a cold, and could not smell! King James was pictured, &c.

WIT.

1. Wit and wisdom differ : wit is upon the sudden turn ; wisdom is in bringing about ends.

2. Nature must be the groundwork of wit and art : otherwise whatever is done will prove but Jack-pudding's work.

3. Wit must grow like fingers : if it be taken from others, it is like plums stuck upon black thorns : there they are awhile, but they come to nothing.

4. He that will give himself to all manner of ways to get money, may be rich ; so he that lets fly all he knows or thinks, may by chance be satirically witty. Honesty sometimes keeps a man from growing rich, and civility from being witty.

5. Women ought not to know their own wit, because they will still be showing it, and so spoil it : like a child that will continually be showing its fine new coat ; till, at length, it all bedaubs it with its pah hands.

6. Fine wits destroy themselves with their own plots, in meddling with great affairs of state : they commonly do as the ape that saw the gunner put bullets in the cannon, and was pleased with it, and he would be doing so too : at last, he puts himself into the piece, and so both ape and bullet were shot away together.

WOMEN.

1. *Let the women have power of their heads, because of the angels.* The reason of the words *because of the angels*, is this : the Greek church held an opinion that the angels fell in love with women :

this fancy St. Paul discreetly catches, and uses it as an argument to persuade them to modesty.

2. The grant of a place is not good by the canon law before a man be dead: upon this ground some mischief might be plotted against him in present possession, by poisoning, or some other way. Upon the same reason, a contract made with a woman during her husband's life was not valid.

3. Men are not troubled to hear a man dispraised; because they know, though he be naught, there is worth in others: but women are mightily troubled to hear any of them spoken against; as if the sex itself were guilty of some unworthiness.

4. Women and princes must both trust somebody; and they are happy or unhappy, according to the desert of those under whose hands they fall: if a man knows how to manage the favour of a lady, her honour is safe, and so is a prince's.

5. An opinion grounded upon that, Gen. vi. *The sons of God saw the daughters of men that they were fair.*

YEAR.

1. It was the manner of the Jews, if the year did not fall out right, but that it was dirty for the people to come up to Jerusalem at the feast of the pass-over, or that their corn was not ripe for their first fruits, to intercalate a month, and so have, as it were, two Februaries; thrusting up the year still higher, March into April's place, April into May's place, &c.: whereupon it is impossible for us to know when our Saviour was born, or when he died.

2. The year is either the year of the moon, or the year of the sun; there is not above eleven days'

difference : our moveable feasts are according to the year of the moon, else they should be fixed.

3. Though they reckon ten days sooner beyond sea, yet it does not follow their spring is sooner than ours: we keep the same time in natural things; and their ten days sooner, and our ten days later, in those things mean the self same time; just as twelve *sous* in French are tenpence in English.

4. The lengthening of days is not suddenly perceived till they are grown a pretty deal longer; because the sun, though it be in a circle, yet it seems for a while to go in a right line: for take a segment of a great circle especially, and you shall doubt whether it be straight or no: but when that sun is got past that line, then you presently perceive the days are lengthened. Thus it is in the winter and summer solstice, which is indeed the true reason of them.

5. The eclipse of the sun is, when it is new moon; the eclipse of the moon when it is full. They say Dionysius was converted by the eclipse that happened at our Saviour's death, because it was neither of these, and so could not be natural.

ZEALOTS.

One would wonder Christ should whip the buyers and sellers out of the temple, and nobody offer to resist him, considering what opinion they had of him: but the reason was, they had a law, that whosoever did profane *sanctitatem Dei aut templi*, the holiness of God or the temple, before ten persons, it was lawful for any of them to kill him, or to do any thing this side killing him; as whipping him,

or the like : and hence it was, that when one struck our Saviour before the judge, where it was not lawful to strike, as it is not with us at this day, he only replies : “ If I have spoken evil, bear witness of the evil ; but if well, why smitest thou me ? ” He says nothing against their smiting him, in case he had been guilty of speaking evil, that is, blasphemy ; and they could have proved it against him. They that put this law in execution were called zealots : but afterwards they committed many villanies.

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THE END.

ANALYSTS
OF THE
LAWS OF ENGLAND
BY
SIR W^m BLACKSTONE.



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PREFACE.

IT hath often been observed with concern, that the study of the laws of our country hath been totally neglected in the usual education of English gentlemen; and, in particular, that no opportunities of cultivating this branch of learning have hitherto been afforded in those excellent and illustrious seminaries, wherein every other science is taught in its utmost perfection. To remedy in some little degree so just a complaint, the compiler of the following sheets was induced about three years ago to institute, and since to continue, a course of lectures, calculated for the promotion of this study in the University of Oxford: and as he was encouraged to enter upon this undertaking by gentlemen, both in the university and out of it, for whose learning and judgment the world has the highest deference; so he cannot but acknowledge, with due gratitude, the favourable reception which hath been given it—a mark of approbation, which he is sensible must be attributed entirely to the propriety of the design, and not to the manner of its execution.

In order to render this attempt more extensively useful, he thought it incumbent upon him to accommodate his lectures, not only to the use of such students as were more immediately designed for the profession of the common law—but also of such other gentlemen as were desirous of some general acquaintance with the constitution and legal

polity of their native country: he therefore made it his first endeavour, to mark out a plan of the laws of England, so comprehensive as that every title might be reduced under some or other of its general heads, which the student might afterwards pursue to any degree of minuteness; and at the same time so contracted, that the gentleman might with tolerable application contemplate and understand the whole: for if this was successfully performed, he apprehended he should then be enabled, with greater perspicuity and ease, to execute the remainder of his design; in deducing the history and antiquities of the principal branches of law, in selecting and illustrating their fundamental principles and leading rules, in explaining their utility and reason, and in comparing them with the laws of nature and of other nations.

In the pursuit of these his endeavours, he found himself obliged to adopt a method, in many respects, totally new. The most early, and indeed the most valuable, of those who have laboured in reducing our laws to a system, are Glanvil, and Bracton, Britton, and the author of *Fleta*: but these, and all others who preceded king Henry the Eighth, are so occupied in ancient, (he does not say, useless) learning, that it had been but an awkward attempt to engraft on their stock the improvements of later ages. Fitzherbert, and Brook, and the subsequent authors of abridgments, have chosen a method the least adapted of any to convey the rudiments of a science; namely, that of the alphabet. Lord Bacon, in his *Elements*, hath purposely avoided any regular order; selecting only some distinct and disjointed aphorisms, according to his own account of them; which, however, he hath expounded in so excellent a manner, that the narrowness of his plan is therefore the more to be regretted. The *Institutes* of sir Edward Coke are unfortunately as deficient in method as they are rich in matter—at least, the first two parts of them; wherein, acting only the part of a commentator, he hath thrown together an infinite treasure of learning in a loose desultory order. Dr. Cowel hath indeed endeavoured to reduce the law of England, in his *Latin Institutions*, to the model of those of Justinian: and we cannot be surprised, that so forced and unnatural a contrivance should be lame and de-

fective in its execution. Sir Henry Finch's Discourse of Law is a treatise of a very different character: his method is greatly superior to all that were before extant; his text is weighty, concise, and nervous; his illustrations are apposite, clear, and authentic: but, with all these advantages, it is not sufficiently adapted to modern use; since the subsequent alterations of the law, by the abolition of military tenures, and the disuse of real actions, have rendered near half of his book obsolete. Dr. Wood has effectually removed this objection, but has fallen into the contrary extreme; his Institute being little more than Finch's Discourse enlarged, and so thoroughly modernised, as to leave us frequently in the dark, with regard to the reason and original of many still subsisting laws, which are founded in remote antiquity: and, as in some titles his plan is too contracted, in others also it seems to be too diffuse. Upon the whole, however, his work is undoubtedly a valuable performance; and great are the obligations of the student to him, and his predecessor Finch, for their happy progress in reducing the elements of law from their former chaos to a regular methodical science. Yet, as neither could be followed entirely in the proposed course of academical lectures, it was judged the most eligible way not to adopt them in part; especially, as there were extant the outlines of a still superior method, sketched by a very masterly hand.

For, of all the schemes hitherto made public for digesting the laws of England, the most natural and scientific of any, as well as the most comprehensive, appeared to be that of sir Matthew Hale, in his posthumous Analysis of the Law. This distribution therefore hath been principally followed; with what variations, the learned reader will easily perceive from the ensuing abstract; and it may be no unprofitable employment for the student to learn by comparing them. For these the compiler thinks it unnecessary to give his reasons: for, since those who have gone before him have successively deviated from each other's plan, he hopes to be excused, if, in order to adapt some things the better to his own capacity, he frequently departs from them all; having in general rather chosen, by compounding their several

schemes, to extract a new method of his own, than implicitly to copy after any.

Indeed, had he closely adhered to Hale's, or any other distribution, it might probably have rendered the task he had undertaken less laborious; at least, it would have saved him the trouble of the present publication: for he soon became sensible of one inconvenience attending his deviation from former systems: that, in a course of oral lectures, on a science entirely new, and sometimes a little abstruse, it was not always easy for his audience so far to command their attention, as at once to apprehend both the method and matter delivered: and whenever, through inattention in the hearers, or, (too frequently) through obscurity in the reader, any point of importance was forgotten or misunderstood, it became next to impossible to gather up the broken clew, without having some written compendium to which they might resort upon occasion. These considerations gave birth to the following Analysis, which exhibits the order and principal divisions of his course; and is only to be considered as a larger syllabus, interspersed with a few definitions and general rules, to assist the recollection of such gentlemen as have formerly honoured him with their attendance, or such as may hereafter become his auditors, till this task shall fall into abler hands; and the province which he originally undertook in a private capacity, shall be put upon a public establishment.

With regard to the book in general, if by any accident it should fall into other hands than those for whose use it is designed, the author hopes it will meet with that candour which is ever the companion of sound learning. The gentlemen of his own profession, he is confident, will suspend their censures of whatever (in this abstract) may appear either dubious or unwarrantable; at least till they are informed how far (in the work at large) it is guarded by restrictions, qualified by exceptions, or supported by reason and authority: and in the end, he must beg leave to apply to his whole undertaking, as well as to this trifling performance, the words of his master Littleton: "*Jeo ne voill que tu crez, que tout ceo que jeo ay dit en lez ditez lyvers soit Ley; quar jeo ne ceo voill entreprendre, ne presumer sur moy. Nient*

meins, coment que eerten choses, queux sont motes et specifyez en lez ditez lyvers, ne sont pas Ley, uneore tielx choses ferront toy plus apte et able de entendre et apprendre lez argumentez et lez reasons del Ley."

ALL SOULS COLLEGE,
2 Nov. 1756.

[Such alterations as were rendered necessary by statutes enacted subsequently to the former publication of this Analysis, have been inserted in the present edition within brackets.]

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY JOHN BURNET, BISHOP OF SALISBURY.

IN TWO VOLUMES.

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SIR W. BLACKSTONE'S
ANALYSIS
OF
THE LAWS OF ENGLAND.

BOOK I.

CHAPTER I.

Of the Nature of Laws in general.

I.

LAW is a rule of action, prescribed by a superior power.

II.

Natural law is the rule of human action, prescribed by the Creator, and discoverable by the light of reason.

III.

The divine or revealed law, considered as a rule of action, is also the law of nature, imparted by God himself.

IV.

The law of nations is that which regulates the conduct and mutual intercourse of independent states with each other, by reason and natural justice.

V.

Municipal, or civil law, is the rule of civil conduct, prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong.

VI.

Society is formed for the protection of individuals; and states, or government, for the preservation of society.

VII.

In all states there is an absolute supreme power, to which the right of legislation belongs; and which, by the singular constitution of these kingdoms, is vested in the king, lords, and commons.

VIII.

The parts of a law are, 1. the declaratory—which defines what is right and wrong; 2. the directory—which consists in commanding the observation of right, or prohibiting the commission of wrong; 3. the remedial, or method of recovering private

rights, and redressing private wrongs ; 4. the vindicatory sanction of punishments for public wrongs—wherein consists the most forcible obligation of human laws.

IX.

To interpret a law, we must inquire after the will of the maker ; which may be collected either from the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law.

X.

From the latter method of interpretation arises equity, or the correction of that wherein the law (by reason of its universality) is deficient.

CHAPTER II.

Of the Grounds and Foundation of the Laws of England.

I.

THE laws of England are of two kinds ; the unwritten or common law, and the written or statute law.

II.

The unwritten law includes—1. general customs ; 2. particular customs ; 3. particular laws.

III.

General customs, or the common law, properly so called, are founded upon immemorial universal usage, whereof judicial decisions are the evidence ; which decisions are preserved in the public records, explained in the year-books and reports, and digested by writers of approved authority.

IV.

Particular customs are those, which are only in use within some peculiar districts—as gavel-kind, the customs of London, &c.

V.

These, 1. must be proved to exist ; 2. must appear to be legal, that is, immemorial, continued, peaceable, reasonable, certain, compulsory, beneficial, and consistent ; 3. must, when allowed, receive a strict construction.

VI.

Particular laws are such as, by special custom, are adopted and used only in certain peculiar courts, under the superintendence and control of the common and statute law ; namely, the Roman, civil, and canon laws.

VII.

The written or statute laws, are the acts which are made by the king, lords, and commons, in parliament, to supply the defects, or amend what is amiss, of the unwritten law.

VIII.

In order to moderate the rigour of both the unwritten and written law, in matters of private right, it is the office of equity to interpose.

CHAPTER III.

Of the Countries subject to the Laws of England.

I.

THE laws of England are not received in their full extent in any other territories, besides the kingdom of England, and the dominion of Wales, which have, in most respects, an entire community of laws.

II.

Scotland, notwithstanding the union, retains its own municipal laws, though subject to regulation by the British parliament.

III.

Berwick is subject to the Scots law, but bound by all acts of parliament.

IV.

Ireland is a distinct subordinate kingdom, governed by the common law of England; but not bound by modern acts of the British parliament, unless particularly named. [Ireland has since been

united to Great Britain, by stat. 39 and 40 Geo. III. c. 67, and both at present form but one kingdom, under the name of the United Kingdom of Great Britain and Ireland. Ireland is now governed by the common law of England, the statutes enacted by the Irish parliament, and such of the statutes of the parliament of the united kingdom as extend to the united kingdom generally, or as are restricted in their operation to Ireland only.]

V.

The isle of Man, the Norman isles, (as Guernsey, &c.) and our plantations abroad, are governed by their own laws; but are bound by acts of the British parliament, if specially named therein.

VI.

The territory of England is divided, ecclesiastically, into provinces, dioceses, archdeaconries, rural deanries, and parishes.

VII.

The civil division is, first, into counties, of which some are palatine; then, sometimes, into rapes, lathes, or trithings; next, into hundreds, or wapentakes; and, lastly, into towns, vills, or tithings.

CHAPTER IV.

*Of the Objects of the Laws of England; and, first,
of the Absolute Rights of Individuals.*

I.

THE objects of the laws of England are, 1. Rights ;
2. Wrongs.

II.

Rights are the rights of persons, or the rights of things.

III.

The rights of persons are such as concern, and are annexed to, the persons of men : and, when the person to whom they are due is regarded, they are called simply rights ; but, when we consider the person from whom they are due, they are then denominated duties.

IV.

Persons are either natural, that is, such as they are formed by nature ; or artificial, that is, created by human policy, as bodies politic, or corporations.

V.

The rights of natural persons are, 1. absolute, or such as belong to individuals ; 2. relative, or such as regard members of society.

VI.

The absolute rights of individuals, regarded by

the municipal laws, (which pay no attention to duties of the absolute kind) consist in political or civil liberty.

VII.

Political or civil liberty is the natural liberty of mankind, so far restrained by human laws as is necessary for the good of society.

VIII.

The absolute rights, or civil liberties, of Englishmen, as frequently declared in parliament, are principally three:—the right of personal security, of personal liberty, and of private property.

IX.

The right of personal security consists in the legal enjoyment of life, limb, body, health, and reputation.

X.

The right of personal liberty consists in the free power of loco-motion, without illegal restraint or banishment.

XI.

The right of private property consists in every man's free use and disposal of his own lawful acquisitions, without injury or illegal diminution.

XII.

Besides these three primary rights, there are others which are secondary and subordinate; *viz.* to preserve the former from unlawful attacks: 1.

the constitution and power of parliaments ; 2. the limitation of the king's prerogative : and, to vindicate them, when actually violated ; 3. the regular administration of public justice ; 4. the right of petitioning for redress of grievances ; 5. the right of having and using arms for self-defence.

CHAPTER V.

Of the Rights of Persons in public Relations ; and therein, first, of the Parliament.

I.

THE relations of persons are, 1. public ; 2. private. The public relations are magistrates and people. Magistrates are supreme or subordinate ; and of supreme magistrates, in England, the parliament is the supreme legislative, the king the supreme executive.

II.

Parliaments, in some shape, are of as high antiquity as the Saxon government in this island ; and have subsisted, in their present form, at least five hundred years.

III.

The parliament is assembled by the king's writs, and its sitting must not be intermitted above three years.

IV.

Its constituent parts are the king's majesty, the lords spiritual and temporal, and the commons represented by their members; each of which parts has a negative or necessary voice in making laws.

V.

With regard to the general law of parliament: Its power is absolute; each house is the judge of its own privileges; and all the members of either house are entitled to the privilege of speech, of person, of their domestics, and of their lands and goods. [But these privileges as to their servants and property, together with all other privileges which derogated from the common law, in matters of civil right, save only as to freedom of person in the members themselves, have since been relinquished by parliament, by stat. 10 Geo. III. c. 50.]

VI.

The peculiar privileges of the lords are, to hunt in the king's forests; to be attended by the sages of the law; to make proxies; to enter protests; and to regulate the election of the sixteen peers of North Britain, [and of the twenty-eight peers of Ireland.]

VII.

The peculiar privileges of the commons are, to raise taxes on the subject; and to determine the merits of their own elections, with regard to the qualifications of the electors and elected, and the proceedings at elections themselves.

VIII.

Bills are usually twice read in each house, committed, engrossed, and then read a third time; and when they have obtained the concurrence of both houses, and received the royal assent, they become acts of parliament.

IX.

The houses may adjourn themselves; but the king only can prorogue the parliament.

X.

Parliaments are dissolved, 1. at the king's will; 2. by the demise of the crown, *i. e.* within six months after; 3. by length of time, or having sat for the space of seven years.

CHAPTER VI.

Of the King; and, first, of his Title.

I.

THE supreme executive power of this kingdom is lodged in a single person, the king or queen.

II.

This royal person may be considered with regard to, 1. his title; 2. his dignity; 3. his duties; 4. his councils; 5. his royal family; 6. his prerogative; 7. his revenue.

III.

With regard to his title—The crown of England, by the positive constitution of the kingdom, hath ever been descendible, and so continues.

IV.

The crown is descendible in a course peculiar to itself.

V.

This course of descent is subject to limitation by parliament.

VI.

Notwithstanding such limitations, the crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited.

VII.

King Egbert, king Canute, and king William I. have been successively constituted the common stocks, or ancestors, of this descent.

VIII.

At the revolution, the convention of estates, or representative body of the nation, declared, that the misconduct of king James II. amounted to an abdication of the government, and that the throne was thereby vacant.

IX.

In consequence of this vacancy, and from a regard to the ancient line, the convention appointed the

next protestant heirs of the blood-royal of king Charles I. to fill the vacant throne, in the old order of succession ; with a temporary exception, or preference, to the person of king William III.

X.

On the impending failure of the protestant line of king Charles I. whereby the throne might again have become vacant, the king and parliament extended the settlement of the crown to the protestant line of king James I. *viz.* to the princess Sophia of Hanover, and the heirs of her body, being protestants : and she is now the common stock from whom the heirs of the crown must descend.

CHAPTER VII.*Of the King's Dignities, Duties, Councils, and Royal Family.*

I.

THE king's dignity consists, 1. in his personal sovereignty ; 2. in his absolute perfection ; 3. in his perpetuity ; 4. in his legal ubiquity ; 5. in that he is bound by no statute, unless specially named ; 6. in that his deed is a public record.

II.

The king's duties are, to govern his people according to law, to execute judgment in mercy, and to maintain the established religion. These are his

part of the original contract between himself and the people, founded in the nature of society, and expressed in his oath at the coronation.

III.

The king's councils are, 1. the parliament; 2. the peers; 3. the judges; 4. the privy council.

IV.

The king's royal family are, 1. The queen, either regnant, consort, or dowager; 2. the prince and princess of Wales, and the princess royal; 3. the king's other descendants.

CHAPTER VIII,

Of the King's Prerogative.

I.

PREROGATIVE is that special power and pre-eminence, which the king hath above other persons, and out of the ordinary course of law, in right of his regal dignity.

II.

Such prerogatives are either direct, or incidental. The incidental, arising out of other matters, are considered as they arise: we now treat only of the direct.

III.

In prerogative consists the executive power of government.

IV.

In foreign concerns, the king, as the representative of the nation, has the right or prerogative, 1. of sending and receiving ambassadors ; 2. of making treaties ; 3. of proclaiming war and peace ; 4. of issuing reprisals ; 5. of granting safe conducts.

V.

In domestic affairs, the king is considered as the general of the kingdom, and may raise fleets and armies, build forts, and confine his subjects within the realm, or recall them from foreign parts.

VI.

The king is also the fountain of justice, and general conservator of the peace ; and therefore may erect courts, prosecute offenders, pardon crimes, and issue proclamations.

VII.

He is likewise the fountain of honour, of office, and of privilege.

VIII.

He is also the arbiter of domestic commerce ; (not of foreign, which is regulated by the law of merchants) and is therefore entitled to the erection of public marts, the regulation of weights and measures, and the coinage or legitimation of money.

IX.

The king is, lastly, the supreme head of the church; and, as such, regulates synods, nominates bishops, and receives appeals in all ecclesiastical causes.

CHAPTER IX.

Of the King's ordinary Revenue.

I.

THE king's revenue is either ordinary or extraordinary; and the ordinary is, 1. ecclesiastical; 2. temporal.

II.

The ecclesiastical revenue consists, 1. in the custody of the temporalities of vacant bishoprics; 2. in corodies and pensions; 3. in extra-parochial tithes; 4. in the first fruits and tenths of benefices.

III.

The king's ordinary temporal revenue consists, 1. in the demesne lands of the crown; 2. in the hereditary excise; being part of the consideration for the purchase of his feudal profits, and the prerogatives of purveyance and pre-emption; 3. in wine licenses; being the residue of the same consideration; 4. in his forests; 5. in his courts of justice;

6. in royal fish ; 7. in wrecks, and things jetsam, flotsam, and ligan ; 8. in royal mines ; 9. in treasure trove ; 10. in waifs ; 11. in estrays ; 12. in forfeitures for offences, and deodands ; 13. in escheats of lands ; 14. in the custody of idiots and lunatics. [What is usually termed the hereditary revenue of the crown, namely, the profits of the crown lands, the hereditary excise, the duty on wine licenses, and the profits arising from courts of justice, has been relinquished by his-present majesty, and now forms part of the consolidated fund ; instead of which, parliament have granted to his majesty, during his life, for the maintenance of his civil list, 850,000*l.* in England, and 207,000*l.* in Ireland, chargeable upon the consolidated fund of the United Kingdom. stat. 1 Geo. IV. c. 1.]

CHAPTER X.

Of the King's extraordinary Revenue.

1.

THE king's extraordinary revenue consists in aids, subsidies, and supplies, granted him by the commons in parliament.

II.

Heretofore, these were usually raised by grants of the nominal tenth or fifteenth of the moveables in every township ; or by subsidies assessed upon individuals, with respect to their lands and goods.

III.

A new system of taxation took place soon after the revolution : our modern taxes are therefore, 1. annual ; 2. perpetual.

IV.

The annual taxes are, 1. the land-tax, or the ancient subsidy raised upon a new assessment ; 2. the malt-tax, being an annual excise on malt, mum, cider, and perry.

V.

The perpetual taxes are, 1. the customs, or tonnage and poundage of all merchandize, exported and imported ; 2. the excise duty, or inland imposition, on a great variety of commodities ; 3. the salt duty, or excise on salt ; 4. the Post-Office, or duty for the carriage of letters ; 5. the stamp duty on paper, parchment, &c. ; 6. the duty on houses and windows ; 7. the duty on licenses for hackney-coaches and chairs.

VI.

Part of this revenue is applied to pay the interest of the national debt, till the principal is discharged by parliament.

VII.

The produce of these several taxes were originally separate and specific funds, to answer specific loans upon their respective credits ; but are now consolidated by parliament into three principal funds, the aggregate, general, and South-sea funds, to answer

all the debts of the nation ; the public faith being also superadded, to supply deficiencies, and strengthen the security of the whole.

VIII.

The surplusses of these funds, after paying the interest of the national debt, are carried together, and denominated the sinking fund ; which, unless otherwise appropriated by parliament, is annually applied to pay off some part of the principal.

IX.

But, previous to this, the sinking fund is charged to make up the deficiencies, if any, in the civil list ; which is the immediate proper revenue of the crown, settled by parliament on the king at his accession, for defraying the charges of civil government.

CHAPTER XI.

Of subordinate Magistrates.

I.

SUBORDINATE magistrates, of the most general use and authority, are, 1. sheriffs ; 2. coroners ; 3. justices of the peace ; 4. constables ; 5. surveyors of the highways ; 6. overseers of the poor.

II.

The sheriff is the keeper of each county, annually nominated in due form by the king ; and is (within

his county) a judge, a conservator of the peace, a ministerial officer, and the king's bailiff.

III.

Coroners are permanent officers of the crown in each county, elected by the freeholders, whose office it is to make inquiry concerning the death of the king's subjects, and certain revenues of the crown; and also, in particular cases, to supply the office of sheriff.

IV.

Justices of the peace are magistrates in each county, statutely qualified, and commissioned by the king's majesty; with authority to conserve the peace, to hear and determine felonies, and other misdemeanors, and to do many other acts, committed to their charge by particular statutes.

V.

Constables are officers of hundreds and townships, appointed at the leet, and empowered to preserve the peace, to keep watch and ward, and to apprehend offenders.

VI.

Surveyors of the highways are officers, appointed annually, in every parish, to remove annoyances in, and to direct the reparation of, the public roads.

VII.

Overseers of the poor are officers, appointed annually, in every parish, to relieve such impotent,

and employ such sturdy poor, as are settled in each parish,—by birth ;—by parentage ;—by marriage ;—or by forty days' residence, accompanied with, 1. notice ; 2. renting a tenement of ten pounds annual value ; 3. paying their assessed taxations ; 4. hiring and service for a year ; 5. apprenticeship ; 6. having a sufficient estate in the parish.

CHAPTER XII.

Of the People, whether Aliens or Natives ; and, among the latter, first, of the Clergy.

I.

THE people are either aliens, that is, born out of the dominions, or allegiance, of the crown of Great Britain ; or natives, that is, born within it.

II.

Allegiance is the duty of all subjects ; being the reciprocal tie of the people to the prince, in return for the protection he affords them ; and, in natives, this duty of allegiance is natural and perpetual ; in aliens, is local and temporary only.

III.

The rights of natives are also natural and perpetual ; those of aliens local and temporary only ; unless they be made denizens by the king, or naturalized by parliament.

IV.

Natives are also either clergy, that is, all persons in holy orders, or in ecclesiastical offices ; or laity, which comprehends the rest of the nation.

V.

The clerical part of the nation, thus defined, are, 1. archbishops and bishops ; 2. deans and chapters ; 3. archdeacons ; 4. rural deans ; 5. parsons and vicars ; to whom there are generally requisite, holy orders, presentation, institution, and induction ; 6. curates : to which may be added, 7. churchwardens ; 8. parish clerks and sextons.

CHAPTER XIII.

Of the Laity.

I.

THE laity are divisible into three states ; civil, military, and maritime.

II.

The civil state (which includes all the nation, except the clergy, the army, and the navy, and many individuals among them also) may be divided into the nobility, and the commonalty.

III.

The nobility are dukes, marquesses, earls, viscounts, and barons : these had anciently duties annexed to their respective honours : they are created

either by writ, that is, by summons to parliament ; or by the king's letters patent, that is, by royal grant ; and they enjoy many privileges, exclusive of their senatorial capacity.

IV.

The commonalty consist of knights of the garter, knights bannerets, baronets, knights of the Bath, knights bachelors, esquires, gentlemen, yeomen, tradesmen, artificers, and labourers.

V.

The military state, by the standing constitutional law, consists of the militia of each county, raised from among the people according to their respective properties, and commanded by the lord lieutenant.

VI.

The more disciplined occasional troops of the kingdom are kept on foot only from year to year, by parliament ; and, during that period, are governed by martial law, or arbitrary articles of war, formed at the pleasure of the crown.

VII.

The maritime state consists of the officers and mariners of the British navy ; who are governed by express and permanent laws, or the articles of the navy, established by act of parliament.

CHAPTER XIV.

*Of the Private Relations of Master and Servant,
and of Husband and Wife.*

I.

THE private, æconomical, relations of persons, are four : 1. master and servant ; 2. husband and wife ; 3. parent and child ; 4. guardian and ward.

II.

The first relation may subsist between a master and four species of servants : (for slavery is unknown to our laws) *viz.* 1. menial servants, who are hired ; 2. apprentices, who are bound by indentures ; 3. labourers, who are casually employed ; 4. stewards, bailiffs, and factors, who are rather in a ministerial state.

III.

From this relation result divers powers to the master, and emoluments to the servant.

IV.

The master hath a property in the service of his servant ; and must be answerable for such acts as the servant does by his express, or implied command.

V.

The second private relation is that of marriage ;

which includes the reciprocal rights and duties of husband and wife.

VI.

Marriage is duly contracted between persons, 1. consenting ; 2. free from canonical impediments, which make it voidable ; 3. free also from the civil impediments, of prior marriage, of want of age, of non-consent of parents, &c. where requisite ; of want of reason ; either of which make it totally void ; and must be celebrated by a priest, in due form and place.

VII.

Marriage is dissolved, 1. by death ; 2. by divorce in the spiritual court ; not *a mensâ et thoro* only, but *a vinculo matrimonii*, for canonical cause existing previous to the contract ; 3. by act of parliament ; as, for adultery.

VIII.

By marriage the husband and wife become one person in law ; which unity is the principal foundation of their respective rights, duties, and disabilities.

CHAPTER XV.

Of the Private Relations of Parent and Child, and of Guardian and Ward.

I.

THE third, and most universal private relation, is that of parent and child.

II.

Children are, 1. legitimate, or those who are born in lawful wedlock, or within a competent time after ; 2. bastards, or those who are not so.

III.

The duties of parents to legitimate children are, 1. maintenance ; 2. protection ; 3. education.

IV.

The power of parents consists principally in correction, and consent to marriage : both may after death be delegated by will to a guardian ; and the former also, at any time, to a tutor or master.

V.

The duties of legitimate children to parents are obedience, protection, and maintenance.

VI.

The duty of parents to bastards is only that of maintenance.

VII.

The rights of a bastard are such only as he can acquire ; for he is incapable of inheriting any thing.

VIII.

The fourth private relation is that of guardian and ward, which is plainly derived from the last ; these being, during the continuance of their relation, reciprocally subject to the same rights and duties.

IX.

Guardians are of divers sorts : 1. guardians by nature, or the parents ; 2. guardians for nurture, assigned by the ecclesiastical courts ; 3. guardians in socage, assigned by the common law ; 4. guardians by statute, assigned by the father's will : all subject to the superintendence of the court of chancery.

X.

Full age in male or female for all purposes is the age of twenty one years ; (different ages being allowed for different purposes) till which age the person is an infant.

XI.

An infant, in respect of his tender years, has various privileges, and various disabilities in law ; chiefly with regard to suits, crimes, estates, and contracts.

CHAPTER XVI.*Of Bodies Politic, or Corporations.*

I.

BODIES politic, or corporations, which are artificial persons, are established for preserving in perpetual succession certain rights, which, being conferred on natural persons only, would fail in process of time.

II.

Corporations are, 1. aggregate, consisting of many members ; 2. sole, consisting of one person only.

III.

Corporations are also either spiritual, erected to perpetuate the rights of the church ; or lay : and the lay are, 1. civil, erected for many temporal purposes ; 2. eleemosynary, erected to perpetuate the charity of the founder.

IV.

Corporations can only be erected, and named, by virtue of the king's royal charter.

V.

The powers incident to all corporations are, 1. to maintain perpetual succession ; 2. to act in their corporate capacity like an individual ; 3. to hold lands, subject to the statutes of mortmain ; 4. to have a common seal ; 5. to make by-laws ; which last power, in spiritual, or eleemosynary corporations, may be executed by the king or the founder.

VI.

The duty of corporations is to answer the ends of their institution.

VII.

To enforce this duty, all corporations may be visited : spiritual corporations by the ordinary ; lay corporations by the founder, or his representatives ;

viz. the civil by the king, (who is the *fundator incipiens* of all) represented in his court of king's bench; the eleemosynary by the endower, (who is the *fundator perficiens* of such) or by his heirs or assigns.

VIII.

Corporations may be dissolved, 1. by act of parliament; 2. by the natural death of all their members; 3. by surrender of their franchises; 4. by forfeiture of their charter.

BOOK II.

OF THE RIGHTS OF THINGS.

CHAPTER I.

Of Dominion over Things real ; and, first, of Corporeal Hereditaments.

I.

ALL dominion over external objects has its original from the gift of the Creator to man in general.

II.

The substance of things was, at first, common to all mankind ; yet a temporary property, in the use of them, might even then be acquired, and continued, by occupancy.

III.

In process of time, a permanent property was established in the substance, as well as the use of things ; which was also originally acquired by occupancy only.

IV.

Lest this property should determine by the owner's dereliction, or death, whereby the thing would again become common, societies have established

conveyances, wills, and heirships, in order to continue the property of the first occupant ; and where by accident such property becomes discontinued or unknown, the thing usually results to the sovereign of the state, by virtue of the municipal law.

V.

But of some things, which are incapable of permanent substantial dominion, there still subsists only the same transient usufructuary property, which originally subsisted in all things.

VI.

In this property, or exclusive dominion, consist the rights of things ; which are, 1. things real ; 2. things personal.

VII.

In things real may be considered, 1. their several kinds ; 2. the tenures, by which they may be holden ; 3. the estates, which may be acquired therein ; 4. their title, or the means of acquiring and losing them.

VIII.

All the several kinds of things real are reducible to one of these three, *viz.* lands, tenements, or hereditaments ; whereof the second includes the first, and the third includes the first and second.

IX.

Hereditaments, therefore, or whatever may come to be inherited, (being the most comprehensive de-

nomination of things real) are either corporeal or incorporeal.

X.

Corporeal hereditaments consist wholly of lands, in their largest legal sense ; wherein they include not only the face of the earth, but every other object of sense adjoining thereto, and subsisting either above or beneath it.

CHAPTER II.

Of Incorporeal Hereditaments.

I.

INCORPOREAL hereditaments are rights issuing out of things corporeal, or concerning, or annexed to, or exerciseable within, the same.

II.

Incorporeal hereditaments are, 1. advowsons ; 2. tithes ; 3. commons ; 4. ways ; 5. offices ; 6. dignities ; 7. franchises ; 8. corrodies or pensions ; 9. annuities ; 10. rents.

III.

An advowson is a right of presentation to an ecclesiastical benefice, either appendant, or in gross. This may be, 1. presentative ; 2. collative ; 3. donative.

IV.

Tithes are the tenth part of the increase yearly arising from the profits and stock of lands, and the personal industry of mankind. These, by the ancient and positive law of the land, are due of common right to the parson or vicar, unless specially discharged, 1. by real composition; 2. by prescription, either *de modo decimandi*, or *de non decimando*.

V.

Common is a profit which a man hath in the lands of another; being, 1. common of pasture; which is either appendant, appurtenant, because of vicinage, or in gross; 2. common of piscary; 3. common of turbary; 4. common of estovers, or botes.

VI.

Ways are a right of passing over another man's ground.

VII.

Offices are the right to exercise a public or private employment.

VIII.

For dignities, which are titles of honour, see book I. ch. 13.

IX.

Franchises are a royal privilege, or branch of the king's prerogative, subsisting in the hands of a subject.

X.

For corrodies and pensions, which are ecclesiastical annuities, see book I. ch. 9.

XI.

An annuity is a yearly sum of money, charged upon the person, and not upon the lands, of the grantor.

XII.

Rents are a certain profit issuing yearly out of lands and tenements; and are reducible to, 1. rent-service; 2. rent-charge; 3. rent-seck. [There is in fact no such thing as a rent-seck at present. A rent was termed a rent-seck, where the party entitled to it had no power to distrain for it; but the remedy by distress is now given in all cases of rent, by stat. 4 Geo. II. c. 28.]

CHAPTER III.

Of the ancient Tenures of Things real.

I.

THE doctrine of tenures is derived from the feudal law, which was planted in Europe by its northern conquerors, at the dissolution of the Roman empire.

II.

Pure and proper feuds were parcels of land, allotted by a chief to his followers; to be held on the condition of personally rendering due military service to their lord.

III.

These were granted by investiture; were held under the bond of fealty; were inheritable only by descendants; and could not be transferred without the mutual consent of the lord and vassal.

IV.

Improper feuds were derived from the other; but differed from them in their original, their services and renders, their descent, and other circumstances.

V.

The lands of England were converted into feuds of the improper kind, soon after the Norman conquest; which gave rise to the grand maxim of tenure, *viz.* that all lands in the kingdom are holden, mediately or immediately, of the king.

VI.

The distinction of tenures consisted in the nature of their services: as, 1. chivalry, or knight-service, where the service was free, but uncertain; 2. free socage, where the service was free, and certain; 3. pure villenage, where the service was base, and uncertain; 4. privileged villenage, or villein socage, where the service was base, but certain.

VII.

The most universal ancient tenure was that by chivalry, or knight-service ; in which the tenant of every knight's fee was bound, if called upon, to attend his lord to the wars.

VIII.

The fruits and consequences of the tenure by knight-service were, 1. aid ; 2. relief ; 3. primer seisin ; 4. wardship ; 5. marriage ; 6. escheat ; 7. fines upon alienation.

IX.

Grand serjeanty differed from chivalry principally in its render, or service ; and not in its fruits and consequences.

X.

The personal service in chivalry was at length gradually changed into pecuniary assessments, which were called scutage or escuage.

XI.

These military tenures (except the services of grand serjeanty) were, at the restoration of king Charles, totally abolished, and reduced to free socage, by act of parliament.

CHAPTER IV.

Of the modern Tenures of Things real.

I.

FREE SOCAGE is a tenure by any free, certain, and determinate service.

II.

This tenure, the relic of Saxon liberty, includes petit serjeanty, tenure in burgage, and gavelkind.

III.

Free socage lands partake strongly of the feudal nature, as well as those in chivalry; being holden, subject to some service,—at the least, to fealty; subject to relief, to wardship, and to escheat, but not to marriage; subject also formerly to aids, primer seisin, and fines for alienation.

IV.

Pure villenage was a precarious and slavish tenure, at the absolute will of the lord, upon uncertain services of the basest nature.

V.

From hence, by tacit consent or encroachment, have arisen the modern copyholds, or tenure by copy of court roll; in which lands may be still held at the nominal will of the lord, but regulated according to the custom of the manor.

VI.

These are subject, like socage lands, to services, relief, and escheat ; and also to heriots, wardship, and fines upon descent and alienation.

VII.

Privileged villenage, or villein socage, is an exalted species of copyhold tenure, upon base, but certain services ; subsisting only in the ancient demesnes of the crown ; whence the tenure is denominated the tenure in ancient demesne.

VIII.

Copyholds, of ancient demesne, have divers immunities annexed to their tenure ; but are still held by copy of court roll, according to the custom of the manor, though not at the will of the lord.

IX.

Frankalmoign is a tenure by spiritual services, whereby many ecclesiastical and eleemosynary corporations now hold their lands and tenements.

 CHAPTER V.

Of Estates, with respect to their Quantity of Interest ; and, first, of Freeholds of Inheritance.

I.

ESTATES in lands, tenements, and hereditaments, are such interest as the tenant hath therein ; to as-

certain which, may be considered, 1. the quantity of interest; 2. the time of enjoyment; 3. the number and connexions of the tenants.

II.

Estates, with respect to their quantity of interest, or duration, are either freehold, or less than freehold.

III.

A freehold estate, in lands, is such as is created by livery of seisin at common law; or in tenements of an incorporeal nature, by what is equivalent thereto.

IV.

Freehold estates are either estates of inheritance, or not of inheritance, *viz.* for life only: and inheritances are, 1. absolute, or fee-simple; 2. limited fees.

V.

Tenant in fee-simple is he that hath lands, tenements, or hereditaments, to hold to him and his heirs for ever.

VI.

Limited fees are, 1. qualified, or base fees; 2. fees conditional at the common law.

VII.

Qualified, or base fees, are those which, having a qualification subjoined thereto, are liable to be defeated when that qualification is at an end.

VIII.

Conditional fees, at the common law, were such as were granted to the donee, and the heirs of his body, in exclusion of collateral heirs.

IX.

These were held to be fees, granted on condition that the donee had issue of his body ; which condition being once performed by the birth of issue, the donee might immediately aliene the land : but the statute *de Donis*, being made to prevent such alienation, thereupon from the division of the fee, (by construction of this statute) into a particular estate, and a reversion, the conditional fees began to be called fees-tail.

X.

All tenements real, or savouring of the realty, are subject to entails.

XI.

Estates tail may be, 1. general, or special ; 2. male, or female ; 3. given in frank marriage.

XII.

Incident to estates tail are, 1. waste ; 2. dower ; 3. curtesy ; 4. bar, — by fine, recovery, or lineal warranty with assets.

XIII.

Estates tail are now, by many statutes and resolutions, almost brought back to the state of conditional fees at the common law.

CHAPTER VI.

Of Freeholds, not of Inheritance.

I.

FREEHOLDS, not of inheritance, or for life only, are, 1. conventional, or created by the act of the parties; 2. legal, or created by operation of law.

II.

Conventional estates for life are created by an express grant for term of one's own life, or *pur auter vie*; or by a general grant, without expressing any term at all.

III.

Incident to this, and all other estates for life, are estovers and emblements: and to estates *pur auter vie* general occupancy was also incident—as special occupancy still is, if *cestuy que vie* survives the tenant.

IV.

Legal estates for life are, 1. tenancy in tail after possibility of issue extinct; 2. tenancy by the curtesy of England; 3. tenancy in dower.

V.

Tenancy in tail after possibility of issue extinct, is where one or more are tenants in special tail, and, before issue had, a person dies, from whose body the issue was to spring; whereupon the sur-

viving tenant becomes tenant in tail after possibility of issue extinct.

VI.

This estate partakes both of the incidents to an estate tail, and of those to an estate for life.

VII.

Tenancy by the curtesy of England, is where a man marries a woman, seised of an estate of inheritance, and by her has issue, born alive, which was capable of inheriting her estate ; in which case, he shall, upon her death, hold the tenements for his own life, as tenant by the curtesy.

VIII.

Tenancy in dower is where a woman marries a man seised of an estate of inheritance, of which her issue might by any possibility have been heir, and the husband dies ; the woman is hereupon entitled to dower, or one-third part of the lands, to hold for her natural life.

IX.

Dower is either by common law ; by special custom ; *ad ostium ecclesiæ* ; or, *ex assensu patris*.

X.

Dower may be forfeited or barred ; particularly by an estate in jointure.

CHAPTER VII.

Of Estates less than Freehold.

I.

ESTATES less than freehold are, 1. estates for years ; 2. estates at will ; 3. estates at sufferance ; 4. estates on condition.

II.

An estate for years is where a man, seised of lands and tenements, letteth them to another for a certain period of time, which transfers the interest of the term, and the lessee enters thereon, which gives him possession thereof, but not legal seisin of the land.

III.

Incident to this estate are estovers ; and also emblements, if it determines before the full end of the term.

IV.

An estate at will is where lands are let by one man to another, to hold at the will of both parties, and the lessee enters thereon.

V.

Copyholds are estates held at the will of the lord, regulated according to the custom of the manor.

VI.

An estate at sufferance is where one comes into possession of land by lawful title, but keeps it afterwards without any title at all.

VII.

Estates on condition (which may or may not be freehold) are, 1. on condition implied ; 2. on condition expressed ; 3. estates in gage ; 4. estates by statute merchant or staple ; 5. estates by *elegit*.

VIII.

Estates on condition implied are where a grant of an estate has, from its essence and constitution, a condition inseparably annexed to it ; though none be expressed in words.

IX.

Estates on condition expressed are where an express qualification or provision is annexed to the grant of an estate ; on the breach or non-performance of which conditions, either expressed or implied, the estate so granted may be defeated.

X.

Estates in gage, *in vadio*, or pledge, are estates granted as a security for money lent ; being, 1. *in vivo vadio*, or living gage, where the profits of land are granted till a debt be paid, upon which payment the grantor's estate will revive ; 2. *in mortuo vadio*, in dead, or mort gage, where an estate is granted, on condition to be void at a day certain, if the

grantor then repays the money borrowed ; on failure of which, the estate becomes absolutely dead to the grantor.

XI.

Estates by statute merchant, or statute staple, are also estates conveyed to creditors, in pursuance of certain statutes, till their profits have discharged the debt.

XII.

Estates by *elegit* are where, in consequence of a judicial writ so called, lands are delivered by the sheriff to a plaintiff, till their profits shall satisfy a debt adjudged to be due by law.

CHAPTER VIII.

Of Estates, with respect to their Time of Enjoyment.

I.

ESTATES, with respect to their time of enjoyment, are either in immediate possession, or in expectancy ; which estates in expectancy are created at the same time, and are parcel of the same estates, as those upon which they are expectant : these are, 1. remainders ; 2. reversions.

II.

A remainder is an estate limited to take effect, and be enjoyed, after another particular estate in possession is determined.

III.

Therefore, 1. there must be a precedent particular estate, in order to support a remainder; 2. the remainder must pass out of the grantor, at the creation of the particular estate; 3. the remainder must vest in the grantee, during the continuance, or at the determination, of the particular estate.

IV.

Remainders are, 1. vested—where the estate is fixed to remain to a certain person, after the particular estate is spent; 2. contingent—where the estate is limited to take effect, either to an uncertain person, or upon an uncertain event.

V.

An exccutory devise is such a disposition of lands by will, that no estate shall vest thereby at the death of the deviser, but only upon some future contingency, without any precedent particular estate to support it.

VI.

A reversion is the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted; to which are incident, fealty and rent.

VII.

Where two estates, the one less, the other greater, the one in possession, the other in expectancy, meet together in one and the same person, and in one and the same right, the less is merged in the greater.

CHAPTER IX.

Of Estates, with respect to the Number and Connexions of the Tenants.

I.

ESTATES, with respect to the number and connexions of their tenants, may be held, 1. in severalty; 2. in jointenancy; 3. in coparcenary; 4. in common.

II.

An estate in severalty is where one tenant holds it in his own sole right, without any other person being joined with him.

III.

An estate in jointenancy is where an estate is granted to two or more persons; in which case, the law construes them to be jointenants, unless the words of the grant expressly exclude such construction.

IV.

Jointenants have an unity of estate, of title, of time, and of possession ; they are seised *per my et per tout* ; and, therefore, upon the decease of one jointenant, the whole interest remains to the survivor.

V.

Jointenancy may be dissolved, by destroying one of its four constituent unities.

VI.

An estate in coparcenary is where an estate of inheritance descends from the ancestor to two or more persons, who are called parceners, and all together make but one heir.

VII.

Parceners have an unity of estate, title, and possession—but are only seised *per my*, and not *per tout* ; wherefore, there is no survivorship among parceners.

VIII.

Incident to this estate is the law of hotchpot.

IX.

Coparcenary may also be dissolved, by destroying any of its three constituent unities.

X.

An estate in common is where two or more persons hold lands by distinct titles, but by unity of

possession, because none knoweth his own severalty.

XI.

Tenants in common have therefore an unity of possession, (without survivorship—being seised *per my*, and not *per tout*) but no unity of title, time, or estate.

XII.

This estate may be created, 1. by dissolving the constituent unities of the two former ; 2. by express limitation in a grant : and may be destroyed, 1. by uniting the several titles in one tenant ; 2. by partition of the land.

CHAPTER X.

Of the Title to Things real, with the Means of acquiring and losing it ; and, first, of Descent.

I.

A TITLE to, or right to possess, things real, may be reciprocally acquired or lost, 1. by descent ; 2. by purchase.

II.

Descent is the means whereby a man, on the death of his ancestor, acquires a title to his estate, in right of representation, as his heir at law.

III.

To understand the doctrine of descents, we must form a clear notion of consanguinity ; which is the connexion, or relation, of persons descended from the same stock or common ancestor ; and it is, 1. lineal, where one of the kinsmen is lineally descended from the other ; 2. collateral, where they are lineally descended, not one from the other, but both from the same common ancestor.

IV.

The rules of descent, or canons of inheritance, observed by the laws of England, are these :—

- I. Inheritance shall lineally descend, to the issue of the person last actually seised, *in infinitum*, but shall never lineally ascend.
- II. The male issue shall be admitted before the female.
- III. Where there are two or more males in equal degree, the eldest only shall inherit ; but the females all together.
- IV. The lineal descendants, *in infinitum*, of any person deceased, shall represent their ancestor, or stand in the same place as the person himself would have done, had he been living.
- V. On failure of lineal descendants, or issue, of the person last seised, the inheritance shall descend to his next collateral kindred, or the issue lineally

derived from his next immediate ancestor—subject to the three last, and to the three succeeding rules.

VI. Such next collateral kindred must be of the blood of the first purchaser ; to evidence which, the two following rules are established :—

VII. The collateral heir of the person last seised must be his next kinsman, of the whole blood.

VIII. In collateral inheritances, the male stocks shall be preferred to the female ; or kinsmen descending from the blood of the male ancestors shall be admitted before those from the blood of the female—unless where the lands did, in fact, descend from a female.

CHAPTER XI.

Of Purchase in general ; and therein of Occupancy, Prescription, and Escheat.

I.

PURCHASE, *perquisitio*, is the possession of an estate, which a man hath by his own act or agreement ; and not by the mere act of law, or descent from any of his ancestors : this includes, 1. occupancy ; 2. prescription ; 3. escheat ; 4. forfeiture ; 5. bankruptcy ; 6. alienation.

II.

Occupancy is taking the possession of those things, which before had no owner ; and it is either general, or special.

III.

Prescription is a personal immemorial usage of enjoying a right, by a man, and either his ancestors, or those whose estate he hath ; which last is called a *que estate*.

IV.

Escheat is where, upon deficiency of the tenant's inheritable blood, the estate falls to the lord of the fee.

V.

Inheritable blood is wanting to, 1. monsters ; 2. bastards ; 3. the maternal relations in paternal inheritances, and *vice versa* ; 4. kindred of the half blood ; 5. aliens, and their issue ; 6. persons attainted of treason or felony.

CHAPTER XII.*Of Forfeiture and Bankruptcy.*

I.

FORFEITURE is a punishment annexed by law to some illegal act, or negligence, of the owner of

things real; whereby the estate is transferred to another, who is usually the party injured.

II.

Forfeitures are occasioned, 1. by crimes; 2. by alienation, contrary to law; 3. by lapse; 4. by simony; 5. by non-performance of conditions; 6. by waste.

III.

Forfeitures for crimes, or misdemeanors, are for, 1. high treason; 2. misprision of treason; 3. petit treason and felony; 4. outlawry; 5. assaults on a judge, and batteries, sitting the courts; 6. *Præmunire*; 7. popish recusancy, &c.

IV.

Alienations or conveyances which induce a forfeiture, are, 1. those in mortmain, made to corporations contrary to the statute law; 2. those made to aliens; 3. those made by particular tenants, when larger than their estates will warrant.

V.

Lapse is a forfeiture of the right of presentation to a vacant church, by neglect of the patron to present within six calendar months.

VI.

Simony is the corrupt presentation of any one to an ecclesiastical benefice, whereby that turn becomes forfeited to the crown.

VII.

For forfeiture by non-performance of conditions, see Chap. 7.

VIII.

Waste is a spoil, or destruction, in any corporeal hereditaments, to the prejudice of him that hath the inheritance.

IX.

Copyhold estates may have also other causes of forfeiture, according to the custom of the manor.

X.

Bankruptcy is the act of becoming a bankrupt; that is, a trader who secretes himself, or does certain other acts, tending to defraud his creditors; see Chap. 21.

XI.

By bankruptcy all the estates of the bankrupt are transferred to the assignees of his commissioners, to be sold for the benefit of his creditors.

CHAPTER XIII.

Of Alienation by common Assurances; and the general Nature of Deeds.

I.

ALIENATION, conveyance, or purchase, in its more limited sense, is a means of transferring real estates,

wherein they are voluntarily resigned by one man, and accepted by another.

II.

This formerly could not be done by a tenant, without licence from his lord ; nor by a lord, without attornment of his tenant.

III.

All persons are capable of purchasing ; and all, that are in possession of any estates, are capable of conveying them, unless under peculiar disabilities by law.

IV.

Alienations are made by common assurances ; which are, 1. by deed, or matter in pais ; 2. by matter of record ; 3. by special custom ; 4. by devise.

V.

In assurances by deed may be considered, 1. its general nature ; 2. its several species.

VI.

A deed, in general, is a writing sealed and delivered by the parties ; and may be, 1. a deed indented, or indenture ; 2. a deed poll.

VII.

The requisites of a deed are, 1. sufficient parties, and proper subject matter ; 2. good and sufficient consideration ; 3. writing on paper, or parchment, duly stamped ; 4. legal and orderly parts : (as 1st, the premises ; 2dly, the *habendum* ; 3dly, the *tenendum* ; 4thly, the *reddendum* ; 5thly, the condi-

tions; 6thly, the warranty; 7thly, the covenants; 8thly, the conclusion, which includes the date.) 5. reading it, if desired; 6. sealing, and, in many cases, signing it also; 7. delivery; 8. attestation.

VIII.

A deed may be avoided, 1. by the want of any of the requisites before-mentioned; 2. by subsequent matter; as, 1st, rasure or alteration; 2dly, defacing its seal; 3dly, cancelling it; 4thly, disagreement of those whose consent is necessary; 5thly, judgment of a court of justice.

CHAPTER XIV.

Of the several Species of Deeds.

I.

OF deeds, some serve to convey real property, some only to charge and discharge it.

II.

Deeds which serve to convey real property, or conveyances, are either by common law, or by statute; and, of conveyances by common law, some are original or primary, others derivative or secondary.

III.

Original conveyances are, 1. feoffments; 2. gifts; 3. grants; 4. leases; 5. exchanges; 6. partitions.

Derivative are, 7. releases; 8. confirmations; 9. surrenders; 10. assignments; 11. revocations.

IV.

A feoffment is the gift of any corporeal hereditament to another, perfected by livery of seisin, or delivery of bodily possession from the feoffor to the feoffee; without which no freehold estate therein can be created at common law.

V.

A gift is properly the conveyance of lands in tail.

VI.

A grant is the regular method, by common law, of conveying incorporeal hereditaments.

VII.

A lease is the demise, granting, or letting of any tenement, usually for a less term than the lessor hath therein, yet sometimes possibly for a greater; according to the regulations of the restraining and enabling statutes.

VIII.

An exchange is the mutual conveyance of equal interests, the one in consideration of the other.

IX.

A partition is the division of an estate held in jointenancy, in coparcenary, or in common, between the respective tenants; so that each may hold his distinct part in severalty.

X.

A release is the discharge or conveyance of a man's right, in lands and tenements, to another that hath some former estate in possession therein.

XI.

A confirmation is the conveyance of an estate or right *in esse*, whereby a voidable estate is made sure, or a particular estate is increased.

XII.

A surrender is the yielding up of an estate for life, or years, to him that hath the immediate remainder or reversion ; wherein the particular estate may merge.

XIII.

An assignment is the transfer, or making over to another, of the whole right one has in any estate ; but usually in a lease, for life or years.

XIV.

A revocation is the execution of a power, reserved by the grantor in a former deed, of calling back the estate granted : it differs from a defeasance, in that the deed of defeasance must be of the same antiquity as the grant, and that the deed of revocation may be subsequent.

XV.

Conveyances by statute depend much on the doctrine of uses and trusts ; which are a confidence reposed in the terre-tenant, or tenant of the land, that he shall permit the profits to be enjoyed,

according to the directions of *cestuy que use*, or *cestuy que trust*.

XVI.

The statute of uses, having transferred all uses into actual possession, (or, rather, having drawn the possession to the use) has given birth to three other species of conveyance: 1. a covenant to stand seised to uses; 2. a bargain and sale, enrolled; 3. a lease and release, which owe their present operation principally to the statute of uses.

XVII.

Deeds which do not convey, but only charge real property, and discharge it, are, 1. obligations; 2. recognizances; 3. defeasances.

CHAPTER XV.

Of Assurances by Matter of Record.

1.

ASSURANCES by matter of record are where the sanction of some court of record is called in, to substantiate and witness the transfer of real property: these are, 1. private acts of parliament; 2. the king's grants; 3. fines; 4. common recoveries.

II.

Private acts of parliament are a species of assu-

rances, calculated to give (by the transcendent authority of parliament) such reasonable powers or relief as are beyond the reach of the ordinary course of law.

III.

The king's grants, contained in charters or letters patent, are all entered on record, for the dignity of the royal person, and security of the royal revenue.

IV.

A fine (sometimes said to be a feoffment of record) is an amicable composition and agreement of an actual, or fictitious, suit ; whereby the estate in question is acknowledged to be the right of one of the parties.

V.

The parts of a fine are, 1. the writ of covenant ; 2. the licence to agree ; 3. the concord ; 4. the note ; 5. the foot : to which the statute hath added, 6. proclamations.

VI.

Fines are of four kinds : 1. *sur cognizance de droit, come ceo que il ad de son done* ; 2. *sur cognizance de droit tantum* ; 3. *sur concessit* ; 4. *sur done, grant, et render* ; which is a double fine.

VII.

The force and effect of fines (when levied by such as have themselves any interest in the estate) are to

assure the lands in question to the cognizee, by barring the respective rights of parties, privies, and strangers.

VIII.

A common recovery is by an actual, or fictitious, suit or action for land, brought against the tenant of the freehold, who thereupon vouches another, who undertakes to warrant the tenant's title ; but, upon such vouchee's making default, the land is recovered by judgment at law, against the tenant ; who, in return, obtains judgment against the vouchee to recover lands of equal value in recompense.

IX.

The force and effect of a recovery are to assure lands to the recoverer, by barring estates tail, and all remainders and reversions expectant thereon, provided the tenant in tail either suffer, or be vouched in, such recovery.

X.

The uses of a fine or recovery may be directed by, 1. deeds to lead such uses, which are made previous to the levying or suffering them ; 2. deeds to declare the uses, which are made subsequent.

CHAPTER XVI.

Of Assurances by special Custom and Devise.

I.

ASSURANCES by special custom are confined to the transfer of copyhold estates.

II.

This is effected by, 1. surrender by the tenant into the hands of the lord to the use of another, according to the custom of the manor; 2. presentment, by the tenants or homage, of such surrender; 3. admittance of the surrenderee by the lord, according to the uses expressed in such surrender.

III.

Admittance may also be had upon original grants to the tenant from the lord, and upon descents to the heir from the ancestor.

IV.

Devise is a disposition of lands and tenements, contained in the last will and testament of the owner.

V.

This was not permitted by the common law, as it stood since the Conquest, but was introduced by the statute law.

CHAPTER XVII.

*Of Things personal, or Chattels; their Distribution;
and the Property which may be had therein.*

I.

THINGS personal are comprehended under the general name of chattels—which include whatever wants either the duration or the immobility attending things real.

II.

In these are to be considered, 1. their distribution; 2. the property of them; 3. the title to that property.

III.

As to the distribution of chattels, they are, 1. chattels real; 2. chattels personal.

IV.

Chattels real are such quantities of interest in things immoveable, or lands and tenements, as are short of the duration of freeholds, being limited to a time certain, beyond which they cannot subsist. See Chap. 7.

V.

Chattels personal are things moveable, which may be transferred from place to place, together with the person of the owner.

VI.

Property, in chattels personal, is either in possession or in action.

VII.

Property in possession, where a man has the actual enjoyment of the thing, is, 1. absolute; 2. qualified.

VIII.

Absolute property is where a man hath such an exclusive right in the thing, that it cannot cease to be his, without his own act or default.

IX.

Qualified property is such as is not, in its nature, permanent—but may sometimes subsist, and at other times not subsist.

X.

This may arise, 1. where the subject is incapable of absolute ownership; 2. from the peculiar circumstances of the owners.

XI.

Property in action, is where a man hath not the actual occupation of the thing—but only a right to it, arising upon some contract, and recoverable by an action at law.

XII.

The property of chattels personal is liable to re-

mainders, if created by will; to jointenancy, and to tenancy in common.

CHAPTER XVIII.

Of the Title to Things personal, or Chattels, by Occupancy, Prerogative, and Succession.

I.

THE title to things personal may be acquired or lost by 1. occupancy; 2. prerogative; 3. succession; 4. custom; 5. marriage; 6. forfeiture; 7. judgment; 8. grant; 9. contract; 10. bankruptcy; 11. testament; 12. administration.

II.

Occupancy still gives the first occupant a right to those few things which have no legal owner, or which are incapable of permanent ownership.

III.

By prerogative is vested in the crown, or its grantees, the property of the royal revenue; (see Book I. chap. 9, 10) and also the property of all game in the kingdom, with the right of pursuing and taking it.

IV.

By succession the right of chattels is also vested

in corporations aggregate, and likewise in such sole corporations, as are the heads and representatives of corporations aggregate.

CHAPTER XIX.

Of Custom, Marriage, Forfeiture, and Judgment.

I.

By custom, obtaining in particular places, a right may be acquired in chattels; the most usual of which customs are those relating to, 1. heriots; 2. mortuaries; 3. heir-looms.

II.

Heriots are either heriot-service, which differs little from a rent; or heriot-custom, which is a customary tribute of goods and chattels, payable to the lord of the fee, on the decease of the owner of lands.

III.

Mortuaries are a customary gift, due to the minister, in many parishes, on the death of his parishioners.

IV.

Heir-looms are such personal chattels, as descend by special custom to the heir, along with the inheritance of his ancestor.

V.

By marriage the chattels of the wife are vested in the husband, in the same degree of property, and with the same powers, as the wife, when sole, had over them, provided he reduces them to possession.

VI.

The wife also acquires, by marriage, a property in her *paraphernalia*.

VII.

By forfeiture, for crimes and misdemeanors, the right of goods and chattels may be transferred from one man to another, either in part, or totally.

VIII.

Total forfeitures of goods arise from, 1. treason, and misprision thereof; 2. felony; 3. excusable homicide; 4. outlawry; 5. flight; 6. standing mute; 7. atrocious contempts; 8. *præmunire*; 9. pretended prophecies; 10. owling; 11. residing abroad of artificers; 12. challenges to fight for debts at play.

IX.

By judgment, consequent on a suit at law, a man may, in some cases, not only recover, but originally acquire a right to personal property.

CHAPTER XX.

Of Grants and Contracts.

I.

A GRANT, or gift, is a voluntary conveyance of a chattel personal in possession, without any consideration or equivalent.

II.

A contract is an agreement, upon sufficient consideration, to do or not to do a particular thing; and by such contract, any personal property, either in possession or in action, may be transferred.

III.

Contracts may be either express or implied, either executed or executory.

IV.

The consideration of contracts is, 1. a good consideration; 2. a valuable consideration.

V.

The most usual species of personal contracts are, 1. sale or exchange; 2. bailment; 3. hiring or borrowing; 4. debt.

VI.

Sale or exchange is a transmutation of property from one man to another, in consideration of some recompense in value.

VII.

Bailment is the delivery of goods in trust, upon a contract, express or implied, that the trust shall be faithfully performed by the bailee.

VIII.

Hiring or borrowing is a contract, whereby the possession of chattels is transferred for a particular time, on condition that the identical goods (or, sometimes, their value) be restored at the time appointed, together with (in case of hiring) a stipend or price for the use.

IX.

This price being calculated to answer the hazard, as well as inconvenience, of lending, gives birth to the doctrine of interest, or usury, upon loans; and, consequently, to the doctrine of insurance.

X.

Debt is any contract, whereby money becomes due to the creditor: this is, 1. a debt of record; 2. a debt upon special contract; 3. a debt upon simple contract; which last includes paper credit, or bills of exchange, and promissory notes.

CHAPTER XXI.

Of Bankruptcy.

I.

BANKRUPTCY, as defined in Chap. 12, is the act of becoming a bankrupt.

II.

Herein may be considered, 1. who may become a bankrupt; 2. the acts whereby he may become a bankrupt; 3. the proceedings on a commission of bankrupt; 4. how his property is transferred thereby.

III.

Persons of full age, using the trade of merchandise, by buying and selling, and seeking their livelihood thereby, are liable to become bankrupts, for debts of a sufficient amount.

IV.

A trader, who endeavours to avoid his creditors, or evade their just demands, by any of the acts specified in the several statutes of bankruptcy, doth thereby commit an act of bankruptcy.

V.

The proceedings on a commission of bankrupt, so far as they affect the bankrupt himself, are principally by, 1. petition; 2. commission; 3. declara-

tion of bankruptcy; 4. choice of assignees; 5. the bankrupt's surrender; 6. his examination; 7. his discovery; 8. his certificate; 9. his allowance; 10. his indemnity.

VI.

The property of a bankrupt's personal estate is, immediately upon the act of bankruptcy, vested by construction of law in the assignees; and they, when they have collected the whole, distribute it by equal dividends among all the creditors.

CHAPTER XXII.

Of Testament and Administration.

I.

CONCERNING testaments and administrations, considered jointly, are to be observed, 1. their original and antiquity; 2. who may make a testament; 3. its nature and incidents; 4. what are executors and administrators; 5. their office and duty.

II.

Testaments have subsisted in England immemorially; whereby the deceased was at liberty to dispose of his personal estate, reserving, anciently, to his wife and children their reasonable part of his effects.

III.

The goods of intestates belonged anciently to the king, who granted them to the prelates to be disposed in pious uses : but, on their abuse of this trust, in the times of popery, the legislature compelled them to delegate their power to administrators expressly provided by law.

IV.

All persons may make a testament, unless disabled by, 1. want of discretion ; 2. want of free-will ; 3. criminal conduct.

V.

Testaments are the legal declaration of a man's intentions, which he wills to be performed after his death : these are, 1. written ; 2. nuncupative.

VI.

An executor is he, to whom a man by his will commits the execution thereof.

VII.

Administrators are, 1. *durante minore ætate* of an infant executor or administrator ; 2. *cum testamento annexo*, when no executor is named, or the executor refuses to act ; 3. general administrators ; in pursuance of the statutes of Edward III. and Henry VIII.

VIII.

The office and duty of executors, and, in many points, of administrators also, are, 1. to bury the

deceased; 2. to prove the will, or take out administration; 3. to make an inventory; 4. to collect the goods and chattels; 5. to pay debts, observing the rules of priority; 6. to pay legacies, either general or specific, if they be vested, and not lapsed; 7. to distribute the undivided surplus, according to the statute of distributions.

BOOK III.

OF PRIVATE WRONGS, OR CIVIL INJURIES.

CHAPTER I.

Of civil Injuries, and their Redress, by mere Act of the Parties, or the mere Operation of Law.

I.

WRONGS are the privation of right ; and are, 1. private ; 2. public.

II.

Private wrongs, or civil injuries, are an infringement, or privation, of the civil rights of individuals, considered as individuals.

III.

The redress of civil injuries is one principal object of the laws of England.

IV.

This redress is effected by, 1. the mere act of the parties ; 2. the mere operation of law ; 3. by both together, or suit in courts.

V.

Redress, by the mere act of the parties, is that which arises, 1. from the sole act of the party injured; 2. from the joint act of all the parties.

VI.

Of the first sort are, 1. self-defence; 2. recaption of goods; 3. entry on lands and tenements; 4. abatement of nuisances; 5. distress for rent, or for damage; 6. seising of heriots.

VII.

Of the second sort are, 1. accord; 2. arbitration.

VIII.

Redress, effected by the mere operation of law, is, 1. where a creditor is executor or administrator, and is thereupon allowed to retain his own debt; 2. in the case of remitter; where one, who has a good title to lands, &c. comes into possession by a bad one, and is thereupon remitted to his ancient good title, which protects his ill-acquired possession.

CHAPTER II.

Of Courts in general; and, first, of the public Courts of Common Law and Equity.

I.

REDRESS that is effected by the act both of law and of the parties, is by suit or action in the courts of justice.

II.

Herein may be considered, 1. the courts themselves; 2. the cognizance of wrongs, or injuries, therein: and, of courts, 1. their nature and incidents; 2. their several species.

III.

A court is a place wherein justice is judicially administered, by officers delegated by the crown: being either a court of record, or not of record.

IV.

Incident to all courts are a plaintiff, defendant, and judge: and, with us, there are also usually attorneys; and advocates or counsel, *viz.* either barristers, or serjeants, at law.

V.

Courts of justice, with regard to their several species, are, 1. of a public, or general jurisdiction throughout the realm; 2. of a private, or special jurisdiction.

VI.

Public courts of justice are, 1. the courts of common law and equity; 2. the ecclesiastical courts; 3. the military courts; 4. the maritime courts.

VII.

The general and public courts of common law and equity are, 1. the court of piepoudre; 2. the court-baron; 3. the hundred court; 4. the county court; 5. the court of common pleas; 6. the court of king's bench; 7. the court of exchequer; 8. the court of chancery; (which two last are courts of equity as well as law) 9. the court of exchequer-chamber; 10. the house of peers; to which may be added as auxiliaries, 11. the courts of assise and *Nisi prius*.

CHAPTER III.

Of the Residue of public Courts; and those also of a private Jurisdiction.

I.

ECCLESIASTICAL courts, which were separated from the temporal by William the Conqueror, or courts Christian, are, 1. the court of the archdeacon; 2. the court of the bishop's consistory; 3. the court of arches; 4. the court of peculiars; 5. the prerogative court; 6. the court of delegates; 7. the court of review.

II.

The only permanent military court is that of chivalry; the courts martial, annually established by act of parliament, being only temporary. [The court of chivalry, however, is now entirely out of use.]

III.

Maritime courts are, 1. the court of admiralty; 2. the court of delegates; 3. the lords of the privy council, and others, authorised by the king's commission, for prize-causes.

IV.

Courts of a private, or special jurisdiction, are, 1. the forest courts; including the courts of attachments, regard, sweinmote, and justice-seat; 2. the court of commissioners of sewers; 3. the court of the marshalsea, and the palace court; 4. the courts of the principality of Wales; 5. the court of the duchy of Lancaster; 6. the courts of the counties palatine, and other royal franchises; 7. the stannary courts; 8. the courts of London, and other corporations:—to which may be referred the courts of requests, or courts of conscience, and the modern regulations of certain courts baron and county courts; 9. the courts of the two universities.

CHAPTER IV.

Of the Cognizance of civil Injuries.

I.

ALL civil injuries are cognizable either in the courts ecclesiastical, military, maritime, or those of common law.

II.

Injuries cognizable in the ecclesiastical courts are, 1. pecuniary ; 2. matrimonial ; 3. testamentary.

III.

Pecuniary injuries, here cognizable, are, 1. subtraction of tithes ; for which the remedy is by suit to compel their payment, or an equivalent, and also their double value ; 2. non-payment of ecclesiastical dues ; remedy, by suit for payment ; 3. spoliation ; remedy, by suit for restitution ; 4. dilapidations, &c. remedy, by suit for damages.

IV.

Matrimonial injuries are, 1. jactitation of marriage ; remedy, by suit for perpetual silence ; 2. subtraction of conjugal rights ; remedy, by suit for restitution ; 3. inability for the marriage state ; remedy, by suit for divorce ; 4. refusal of decent maintenance to the wife ; remedy, by suit for alimony.

V.

Testamentary injuries are, 1. disputing the validity of wills ; remedy, by suit to establish them ; 2. obstructing of administrations ; remedy, by suit for the granting them ; 3. subtraction of legacies ; remedy, by suit for the payment.

VI.

The course of proceedings herein is much conformed to the civil and canon laws ; but their only compulsive process is that of excommunication.

VII.

Civil injuries, cognizable in the court military, or court of chivalry, are, 1. injuries in point of honour ; remedy, by suit for honourable amends ; [which, however, is now obsolete] 2. encroachments in coat-armour, &c. remedy, by suit to remove them. The proceedings are in a summary method.

VIII.

Civil injuries, cognizable in the courts maritime, are injuries, in their nature of common law cognizance, but arising wholly upon the sea, and not within the precincts of any county. The proceedings are herein also much conformed to the civil law.

IX.

All other injuries are cognizable only in the courts of common law : of which in the remainder of this book.

X.

Two of them are, however, commissible by these and other inferior courts; *viz.* 1. refusal, or neglect of justice; remedies, by writ of *procedendo*, or *mandamus*; 2. encroachment of jurisdiction; remedy, by writ of prohibition.

CHAPTER V.

Of Injuries, and their Remedies, at the common Law; and, first, of Injuries to the Rights of Persons.

I.

IN treating of the cognizance of injuries by the courts of common law, may be considered, 1. the injuries themselves, and their respective remedies; 2. the pursuit of those remedies in the several courts.

II.

Injuries, cognizable by the courts of common law, are in general remedied by putting the party injured into possession of that right, whereof he is unjustly deprived.

III.

This is effected, 1. by delivery of the thing detained to the rightful owner; 2. where that remedy is either impossible or inadequate, by giving the party injured a satisfaction in damages.

IV.

The instruments, by which these remedies may be obtained, are suits or actions ; which are defined to be the legal demand of one's right : and these are, 1. personal ; 2. real ; 3. mixed.

V.

Injuries (whereof some are with, others without force) are, 1. injuries to the rights of persons ; 2. injuries to the rights of property ; and the former are, 1. injuries to the absolute, 2. injuries to the relative rights of persons.

VI.

The absolute rights of individuals are, 1. personal security ; 2. personal liberty ; 3. private property ; (see Book I. Ch. 4.) to which the injuries must be correspondent.

VII.

Injuries to personal security are, 1. against a man's life ; 2. against his body ; 3. against his health ; 4. against his reputation : the first must be referred to the next book.

VIII.

Injuries to the body are, 1. threats ; 2. assault ; 3. battery ; 4. mayhem ; remedy, by action of trespass, *vi et armis*, for damages.

IX.

Injuries to health, by any unwholesome practice, are remedied by a special action of trespass, on the case, for damages.

X.

Injuries to reputation are, 1. slanderous and malicious words ; remedy, by action on the case, for damages ; 2. libels ; remedy, the same ; 3. malicious prosecutions ; remedy, by action of conspiracy, or on the case, for damages.

XI.

The sole injury to personal liberty is false imprisonment ; remedies, 1. by writ of *Habeas Corpus*, to remove the wrong ; 2. by action of trespass, to recover damages.

XII.

For injuries to private property, see the next chapter.

XIII.

Injuries to relative rights affect, 1. husbands ; 2. parents ; 3 guardians ; 4. masters.

XIV.

Injuries to a husband are, 1. abduction, or taking away his wife ; remedy, by action of trespass, *de uxore rapta et abducta* ; to recover possession of his wife, and damages ; 2. criminal conversation with her ; remedy, by action on the case, or rather, by action of trespass, for damages ; 3. beating her ; remedy, by action on the case, [or rather, of trespass,] *per quod consortium amisit* ; for damages, [or by action of trespass by husband and wife.]

XV.

The only injury to a parent, or guardian, is the

abduction of their children, or wards; remedy, by action of trespass, *de filiis, vel custodiis, raptis vel abductis*; to recover possession of them, and damages.

XVI.

Injuries to a master are, 1. retaining his servants; remedy, by action on the case, for damages; 2. beating them; remedy, by action on the case, [or rather, of trespass,] *per quod servitium amisit*; for damages.

CHAPTER VI.*Of Injuries to personal Property.*

I.

INJURIES to the rights of property are either to those of personal or real property.

II.

Personal property is either in possession, or in action.

III.

Injuries to personal property in possession are, 1. by dispossession; 2. by damage, while the owner remains in possession.

IV.

Dispossession may be effected, 1. by an unlawful taking ; 2. by an unlawful detaining.

V.

For the unlawful taking of goods and chattels personal, the remedy is, 1. actual restitution, which is obtained by action of replevin ; 2. satisfaction in damages, by action of trespass, or trover.

VI.

For the unlawful detaining of goods lawfully taken, the remedy is also, 1. actual restitution, by action of replevin, or detinue ; 2. satisfaction in damages, by action on the case, for trover and conversion.

VII.

For damage to personal property, while in the owner's possession, the remedy is in damages, by action of trespass *vi et armis*, or by action of trespass on the case.

VIII.

Injuries to personal property, in action, arise by breach of contracts ; 1. express ; 2. implied.

IX.

Breaches of express contracts are, 1. by non-payment of debts ; remedy, 1. specific payment, recoverable by action of debt ; 2. damages for non-payment, recoverable by action on the case : 2. by non-performance of covenants ; remedy, by

action of covenant ; 1. to recover damages, in covenants personal ; 2. to compel performance, in covenants real : 3. by non-performance of promises, or assumpsits ; remedy, by action on the case, for damages.

X.

Implied contracts are such as arise, 1. from the nature and constitution of government ; 2. from reason and the construction of law.

XI.

Breaches of contracts, implied in the nature of government, are by the non-payment of money which the laws have directed to be paid ; remedy, by action of debt, to compel the specific payment ; or, sometimes, by action on the case, for damages.

XII.

Breaches of contracts, implied in reason and construction of law, are by the non-performance of legal presumptive assumpsits : for which the remedy is in damages, by an action on the case, on the implied assumpsits, 1. of a *quantum meruit* ; 2. of a *quantum valebat* ; 3. of receiving money to another's use ; 4. of an *insimul computassent*, on an account stated ; (the remedy on an account unstated being by action of account) 5. of performing one's duty, in any employment, with integrity, diligence, and skill.

CHAPTER VII.

Of Injuries to real Property, and, first of Dispossession or Ouster of the Subject, from his Freehold.

I.

INJURIES affecting real property are, 1. ouster ; 2. trespass ; 3. nuisance ; 4. waste ; 5. subtraction ; 6. disturbance.

II.

Ouster is the amotion of possession ; and is, 1. of a private subject ; 2. of the king, and his grantees : that of a subject is, 1. from freeholds ; 2. from chattels real.

III.

Ouster from freeholds is effected by, 1. abatement ; 2. intrusion ; 3. disseisin ; 4. discontinuance ; 5. deforcement.

IV.

Abatement is the entry of a stranger, after the death of the ancestor, before the heir.

V.

Intrusion is the entry of a stranger, after a particular estate of freehold is determined, before him in remainder or reversion.

VI.

Disseisin is a wrongful putting out of him that is seised of the freehold.

VII.

Discontinuance is where tenant in tail, or the husband of tenant in fee, make a larger estate of the land than the law alloweth.

VIII.

Deforcement is any other detainer of the freehold from him who hath the property, but who never had the possession.

IX.

The universal remedy for all these is delivery of possession ; and, sometimes, damages for the detention : this is effected, 1. by mere entry ; 2. by action possessory ; 3. by writ of right.

X.

Mere entry on lands, by him who hath the apparent right of possession, will (if peaceable) divest the mere possession of a wrongdoer ; but forcible entries are remedied by immediate restitution, to be given by a justice of the peace.

XI.

Where the wrongdoer hath not only mere possession, but also an apparent right of possession, this may be divested by him who hath the actual right of possession, by means of the possessory actions of writ of entry, or assise.

XII.

A writ of entry is a real action, which disproves the title of the tenant, by showing the unlawful means under which he gained possession; and it may be brought either against the wrongdoer himself, or in the degrees called the *per*, the *per* and *cui*, and the *post*. [Writs of entry, however, are now wholly obsolete in practice.]

XIII.

An assise is a real action, which proves the title of the demandant, by showing his own, or his ancestor's possession; and it may be brought either to remedy abatements; *viz.* the assise of *mort d'ancestor*, &c. or to remedy recent disseisins; *viz.* the assise of *novel disseisin*. [Writs of assise, however, are now entirely disused.]

XIV.

Where the wrongdoer hath gained the actual right of possession, he who hath the right of property can only be remedied by a writ of right, or some writ of a similar nature: as, 1. where such right of possession is gained by the discontinuance of tenant in tail; remedy, for the right of property, by writ of formedon; 2. where gained by recovery in a possessory action, had against tenants of particular estates by their own default; remedy, by writ of *quod ei deforciat*; 3. where gained by recovery in a possessory action, had upon the merits; 4. where gained by the statute of limitations. Remedy, in both cases, by a mere writ of right, the highest writ in the law. [The writ of right is the only real action now in use; for some centuries

it was of very rare occurrence in practice ; but latterly there have been several instances of it.]

CHAPTER VIII.

Of the remaining Species of Ouster.

I.

OUSTER of a subject from chattels real is, 1. from estates by statute and elegit ; 2. from an estate for years.

II.

Ouster, from estates by statute or elegit, is effected by a kind of disseisin ; remedy, restitution and damages, by assise of *novel disseisin* ; [or, which is much more usual, by *scire facias* and re-extent.]

III.

Ouster from an estate for years, is effected by a like disseisin or ejectment ; remedy, restitution and damages ; 1. by writ of *ejectione firmæ* ; 2. by writ of *quare ejecit infra terminum*, [which, however, is now obsolete.]

IV.

A writ of *ejectione firmæ*, or action of trespass in ejectment, lieth where lands, &c. are let for a term of years, and the lessee is ousted or ejected from his

term ; in which case he shall recover possession of his term, and damages.

V.

This is now the usual method of trying titles to land, instead of an action real : *viz.* by 1. the claimant's making an actual or supposed lease upon the land to the plaintiff ; 2. the plaintiff's actual or supposed entry thereupon ; 3. his actual or supposed ouster and ejectment by the defendant ; for which injury this action is brought, either against the tenant, or more usually against some casual or fictitious ejector ; in whose stead the tenant may be admitted defendant, on condition that the lease, entry, and ouster be confessed, and that nothing else be disputed but the merits of the title, claimed by the lessor of the plaintiff.

VI.

A writ of *quare ejecit infra terminum* is an action of a similar nature ; only not brought against the wrongdoer or ejector himself, but such as are in possession under his title. [This writ is now wholly disused.]

VII.

Ouster of the king, or his grantees, is 1. That of a nature similar to the former, but differing in the means of its remedy ; which is, delivery of possession, in consequence of an inquest of office ; which process extends also to chattels personal ; 2. usurpation of offices and franchises ; remedy, by writ of *quo warranto*, to seise them into the king's hands ;

3. refusal to admit, or wrongful removal of, an officer; remedy, 1. by writ of *mandamus*, unless cause, to admit or restore him; to which if a false cause be returned, the remedy is by action on the case, for damages; 2. by peremptory *mandamus*.

CHAPTER IX.

Of Trespass, Nuisance, and Waste.

I.

TRESPASS is an entry upon, and damage done to, another's lands, by one's self or one's cattle, without any lawful authority, or cause of justification—which is called a breach of his close; remedy, damages, by action of trespass *quare clausum fregit*, besides that of distress *damage feasant*.

II.

Nuisance, or annoyance, is any thing that worketh damage or inconvenience; and it is either a public and common nuisance, of which in the next book; or a private nuisance, which is any thing done to the hurt or annoyance of, 1. the corporeal, 2. the incorporeal hereditaments of another.

III.

The remedies for a private nuisance, besides that of abatement, are, 1. damages, by action on the case; (which also lies for special prejudice by a

public nuisance) 2. removal thereof, and damages, by assise of nuisance; 3. like removal, and damages, by writ of *quod permittat prosternere*. [The assise of nuisance, and *quod permittat*, are now obsolete; and the only remedy at present adopted for nuisance, as a civil injury, is the action on the case.]

IV.

Waste is a spoil and destruction in lands and tenements, to the injury of him who hath, 1. a right of common in the lands; 2. the remainder or reversion of the inheritance.

V.

The remedies, for a commoner, are, restitution and damages, by assise of common [which, however, is obsolete]; or damages only, by action on the case.

VI.

The remedy for him in remainder or reversion, is, 1. preventive, by writ of estrepement at common law, [which, however, is now disused] or injunction out of chancery, to stay waste; 2. corrective, by action of waste, to recover the place wasted, and damages, [or by action on the case, in the nature of waste, for damages only.]

CHAPTER X.

Of Subtraction and Disturbance.

I.

SUBTRACTION is, when one who owes services to another withdraws or neglects to perform them : this may be, 1. of rents, and other services, due by tenure ; 2. of those due by custom.

II.

For subtraction of rents and services, due by tenure, the remedy is, 1. by distress, to compel the payment or performance ; 2. by action of debt, to compel the payment ; 3. by writ of *cessavit* ; and, 4. by writ of right *sur disclaimer*, to recover the land itself, [both of which, however, are obsolete.

III.

For subtraction of services, due by custom, the remedy is, 1. by writ of *secta ad molendinum, furnum, torrale*, &c. to compel the performance, and recover damages [which, however, is now wholly disused] ; 2. by action on the case, for damages only.

IV.

Disturbance is the hindering or disquieting the owners of an incorporeal hereditament, in their regular and lawful enjoyment of it.

V.

Disturbances are, 1. of franchises; 2. of commons; 3. of ways; 4. of tenure; 5. of patronage.

VI.

Disturbance of franchises is remedied by a special action on the case, for damages.

VII.

Disturbance of common is, 1. intercommoning without right; remedy, damages, in an action on the case, or of trespass, besides distress *damage feasant*, to compel satisfaction; 2. surcharging the common; remedies, distress *damage feasant*, to compel satisfaction; action on the case, for damages; or writ of admeasurement of pasture, [now disused] to apportion the common; and writ *de secundâ superoneratione*, [now also disused] for the supernumerary cattle, and damages; 3. enclosure, or obstruction; remedies, restitution of the common, and damages, by assise of *novel disseisin*, and by writ of *quod permittat*; [both of which, however, are now obsolete] or damages only, by action on the case.

VIII.

Disturbance of ways is the obstruction, 1. of a way in gross, by the owner of the land; 2. of a way appendant, by a stranger; remedy for both, damages, by action on the case.

IX.

Disturbance of tenure, by driving away tenants,

is remedied by a special action on the case, for damages.

X.

Disturbance of patronage, is the hinderance of a patron to present his clerk to a benefice, whereof usurpation, within six months, is now become a species.

XI.

Disturbers may be, 1. the pseudo-patron, by his wrongful presentation ; 2. his clerk, by demanding institution ; 3. the ordinary, by refusing the clerk of the true patron.

XII.

The remedies are, 1. by assise of *darrein presentment* [now disused] ; 2. by writ of *quare impedit*, to compel institution, and recover damages—consequent to which are the writs of *quare incumbavit*, and *quare non admisit*, for subsequent damages ; 3. by writ of right of advowson, to compel institution, or establish the permanent right, [which, however, is now obsolete, the writ of *quare impedit* being the only remedy now resorted to in practice.]

CHAPTER XI.

Of the Pursuit of Remedies, by Action in the Courts of Common Law; and, first, of Process, Pleading, Demurrer, and Issue.

I.

THE pursuit of the several remedies, furnished by the laws of England, is, 1. by action in the courts of common law; 2. by proceedings in the courts of equity.

II.

Of an action in the court of common pleas, (the proper court for prosecuting civil suits) the orderly parts are, 1. the process; 2. the pleadings; 3. the demurrer, or issue; 4. the trial; 5. the judgment; 6. the appeal; 7. the execution.

III.

Process is the means of compelling the defendant to appear in court; and it includes, 1. the original writ of *præcipe*, or *si fecerit te securum*, with summons, or attachment, and distress infinite; 2. the judicial writs of *capias ad respondendum*, and *testatum capias*—(or, instead of these, in the king's bench, the bill of *Middlesex* and writ of *latitat*; and, in the exchequer, the writ of *quo minus*); 3. the *alias* and *pluries* writs; 4. the exigent and outlawry; 5. the arrest; 6. bail, first to the sheriff, and then to the action.

IV.

Pleadings are the mutual altercations of the plaintiff and defendant in writing; under which are comprised, 1. the declaration; 2. the imparlance, view,oyer, aid, or voucher; 3. the plea—which is either a dilatory plea, 1. to the jurisdiction; 2. in disability of the plaintiff; 3. in abatement: or it is a plea to the action, usually denying the complaint, by pleading, 1. a special bar; 2. the general issue; 4. the replication, rejoinder, surrejoinder, rebutter, surrebutter, &c.

V.

Issue is where the parties, in a course of pleading, come to a point affirmed on one side, and denied on the other—which, if it be a matter of law, is called a demurrer; if it be a matter of fact, it still retains the name of an issue of fact.

CHAPTER XII.

Of the several Species of Trial.

I.

TRIAL is the examination of the point put in issue, either by the original pleadings, or in consequence of a plea *puis darrein continuance*.

II.

The trial of an issue of law, or demurrer, is by the opinion of the judges of the court.

III.

The trial of an issue of fact is, 1. by the record ; 2. by inspection ; 3. by witnesses ; 4. by certificate ; 5. by wager of battel ; 6. by wager of law ; 7. by jury.

IV.

Trial by the record is had, when the existence of such record is the point in issue.

V.

Trial by inspection is had by the court principally when the matter in issue is the evident object of the senses.

VI.

Trial by witnesses (the regular method in the civil law) is only used on a writ of dower, when the death of the husband is in issue.

VII.

Trial by certificate is had in those cases where such certificate must have been conclusive to a jury.

VIII.

Trial by wager of battel, in civil cases, is only had on a writ of right ; but, in lieu thereof, the tenant may have, at his option, the trial by the grand as-

sise. [Trial by battel, however, is now abolished, by stat. 59 Geo. III. c. 46, s. 2.]

IX.

Trial by wager of law is only had, where the matter in issue may be supposed to have been privately transacted between the parties themselves, without the intervention of other witnesses.

 CHAPTER XIII.

Of the Trial by Jury.

I.

TRIAL by jury is, 1. extraordinary, as by the grand assise in writs of right, and by the grand jury in writs of attain; 2. ordinary.

II.

The method and process of the ordinary trial by jury is, 1. the writ of *venire facias* to the sheriff, coroners, or elisors, with the subsequent compulsive process of *habeas corpora*, or *distringas*; 2. the carrying down of the record to the court of *Nisi prius*; 3. the sheriff's return, or panel of, 1. special, 2. common jurors; 4. the challenges; 1. to the array, 2. to the polls of the jurors; either *propter honoris respectum*, *propter defectum*, *propter affectum*, (which is sometimes a principal challenge, sometimes to the favour) or, *propter de-*

dictum ; 5. the *tales de circumstantibus* ; 6. the oath of the jury ; 7. the evidence, which is either by proofs, 1. written, 2. parol—or, by the private knowledge of the jurors : 8. the verdict, which may be, 1. privy, 2. public, 3. special.

CHAPTER XIV.

Of Judgment, Appeal, and Execution.

I.

WHATEVER is transacted at the trial, in the court of *Nisi prius*, is added to the record, under the name of a *postea*—consequent upon which is the judgment.

II.

Judgment is the sentence of law, pronounced by the court, upon the matter contained in the record.

III.

Judgment may be arrested or stayed for causes, [intrinsic, or appearing upon the face of the record ; or it may be suspended, and a new trial granted, for causes] extrinsic, or *dehors* the record.

IV.

Judgments are, 1. interlocutory ; 2. final—which are either complete at first, or incomplete, till perfected by a writ of enquiry.

V.

Costs, or expenses of suit, are now the necessary consequence of obtaining judgment.

VI.

Proceedings, in the nature of appeals from judgment, are, 1. a writ of attaint, to impeach the verdict of a jury, which of late has been superseded by new trials; 2. a writ of *audita querela*, to discharge a judgment by matter that has since happened; 3. a writ of error, from one court of record to another, to correct judgments, erroneous in point of law, and not helped by the statutes of amendment and jeofails.

VII.

Execution is the putting in force of the sentence or judgment of the law; which is effected, 1. where possession of the thing itself is recovered, by writ of *habere facias seisinam, possessionem, &c.*; 2. where money only is recovered, by writ of, 1. *capias ad satisfaciendum*, against the body of the defendant, or, in default thereof, *scire facias*, against his bail; 2. *feri facias*, against his goods and chattels; 3. *levari facias*, against his goods, and the profits of his lands; 4. *elegit*, against his goods, and the possession of his lands; 5. *extendi facias*, and other process, on statutes, recognizances, &c. against his body, lands, and goods.

CHAPTER XV.

Of Proceedings in the Courts of Equity.

I.

EQUITY, being the correction of that wherein the law, by reason of its universality, is deficient, should not therefore interfere, where relief may be had by the ordinary course of law.

II.

Æquitas sequitur legem; and therefore equity should never weaken the fundamental rules of property, established by the common law.

III.

Suits in equity, from the variety of circumstances therein considered, must necessarily be of longer duration than suits at the common law.

IV.

The business of equity is almost infinite; but is chiefly to give relief in matters of fraud, accident, and trust; *secundum conscientiam, et arbitrium boni viri*.

V.

The proceedings in the court of chancery, to which those in the exchequer very nearly conform, are, 1. bill; 2. writ of *subpœna*; and, perhaps, injunction; 3. process of contempt; *viz.* ordinarily, attachment, attachment with proclamations, com-

mission of rebellion, serjeant at arms, and sequestration ; 4. appearance ; 5. demurrer ; 6. plea ; 7. answer ; 8. exceptions, amendments, cross or supplemental bills, bills of revivor, interpleader, &c. ; 9. replication ; 10. issue ; 11. depositions, taken upon interrogatories, and subsequent publication thereof ; 12. hearing ; 13. interlocutory decree, feigned issue, and trial, reference to the master, and report, &c. ; 14. final decree ; 15. rehearing, or bill of review ; 16. appeal to parliament.

BOOK IV.

OF PUBLIC WRONGS, OR CRIMES AND MISDEME-
NORS.

CHAPTER I.

Of the Nature of Crimes and Punishments.

I.

IN treating of public wrongs may be considered, 1. the general nature of crimes and punishments; 2. the persons capable of committing crimes, and their several degrees of guilt; 3. the several species of crimes, and their respective punishments; 4. the means of prevention; 5. the method of punishment.

II.

A crime, or misdemeanor, is an act committed, or omitted, in violation of a public law, either forbidding or commanding it.

III.

Crimes are distinguished from civil injuries, in that they are a breach and violation of the public rights due to the whole community, considered as a community.

IV.

Punishments may be considered with regard to, 1. the power, 2. the end, 3. the measure of their infliction.

V.

The power, or right, of inflicting human punishments, for natural crimes, or such as are *mala in se*, was by the law of nature vested in every individual; but, by the fundamental contract of society, is now transferred to the sovereign power: in which also is vested, by the same contract, the right of punishing positive offences, or such as are *mala prohibita*.

VI.

The end of human punishments is to prevent future offences, 1. by amending the offender himself; 2. by deterring others through his example; 3. by depriving him of the power to do future mischief.

VII.

The measure of human punishments must be determined by the wisdom of the sovereign power, and not by any uniform universal rule; though that wisdom may be regulated and assisted by certain general equitable principles.

CHAPTER II.

Of the Persons capable of committing Crimes, and their several Degrees of Guilt.

I.

ALL persons are capable of committing crimes, unless there be in them a defect of will : for, to constitute a legal crime, there must be both a vicious will, and a vicious act.

II.

The will does not concur with the act, 1. where there is a defect of understanding ; 2. where no will is exerted ; 3. where the act is constrained by force and violence.

III.

A vicious will may therefore be wanting, in the cases of, 1. infancy ; 2. idiocy, or lunacy ; 3. drunkenness, which doth not, however, excuse ; 4. misfortune, or chancemedley ; 5. ignorance, or mistake of fact ; 6. compulsion, or necessity ; which is, 1. that of civil subjection ; 2. that of duress *per minas* ; 3. that of choosing the least pernicious of two evils, where one is unavoidable ; 4. that of want, or hunger, which is no legitimate excuse.

IV.

The king, from his excellence and dignity, is also incapable of doing wrong.

V.

The different degrees of guilt in criminals are, 1. as principals; 2. as accessories.

VI.

A principal in a crime is, 1. he who commits the fact; 2. he who is present at, aiding, and abetting, the commission.

VII.

An accessory is he who doth not commit the fact, nor is present at the commission; but is in some sort concerned therein, either before or after.

VIII.

Accessories can only be in petit treason, and felony: in high treason, and misdemeanors, all are principals.

IX.

An accessory, before the fact, is one who, being absent when the crime is committed, hath procured, counselled, or commanded another to commit it.

X.

An accessory, after the fact, is where a person, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon. Such accessory is usually entitled to the benefit of clergy; where the principal and accessory before the fact, are excluded from it.

CHAPTER III.

Of Offences against the Divine Law, and the Law of Nations.

I.

CRIMES and misdemeanors, cognizable by the laws of England, are such as more immediately offend, 1. the divine law; 2. the law of nations; 3. the municipal law.

II.

Crimes, more immediately offending the divine law, are, 1. apostasy: for which the penalty is incapacity and imprisonment; 2. heresy; penalty for one species thereof, the same; 3. offences against the established church, either by reviling its ordinances, (penalties, fine, deprivation, imprisonment, forfeiture) or, by nonconformity to its worship: 1. through total irreligion; penalty, fine; 2. through protestant dissenting; penalty, suspended by the toleration act; 3. through popery, either in professors of the popish religion, popish recusants convict, or popish priests; penalties, incapacity, double taxes, imprisonment, fines, forfeitures, abjuration of the realm, judgment of felony without clergy, and judgment of high treason; [Many of which penalties, however, are suspended by the Toleration acts, 18 Geo. III. c. 60, and 31 Geo. III. c. 32.] 4. blasphemy; penalty, fine, imprisonment, and corporal punishment; 5. profane swearing and cursing; penalty, fine, or house of

correction ; 6. witchcraft, or, at least, the pretence thereto ; penalty, imprisonment, and pillory ; 7. religious impostures ; penalty, fine, imprisonment, and corporal punishment ; 8. sabbath-breaking ; penalty, fine ; 9. drunkenness ; penalty, fine, or stocks ; 10. lewdness ; penalties, fine, imprisonment, house of correction.

III.

Crimes against the law of nations, animadverted on by the laws of England, are, 1. violation of safe-conducts ; 2. infringement of the rights of ambassadors ; penalty, in both, arbitrary ; 3. piracy ; penalty, judgment of felony, without clergy.

CHAPTER IV.

Of Offences more especially against the King and his Government ; and, first, of High Treason.

I.

CRIMES and misdemeanors, more peculiarly offending the municipal law, are those which especially affect, 1. the king, and his government ; 2. the commonwealth ; 3. individuals.

II.

Offences, especially affecting the king and his government, are, 1. high treason ; 2. felonies injurious

to the prerogative; 3. *præmunire*; 4. other misprisions and contempts.

III.

High treason, according to the statute of Edward III. may be committed, 1. by compassing or imagining the death of the king, or queen-consort, or their eldest son and heir, demonstrated by some overt act; 2. by violating [the queen-consort, or the king's eldest daughter unmarried, or] the wife of his eldest son; 3. by some overt act of levying war against the king in his realm; 4. by adherence to the king's enemies; 5. by counterfeiting the king's great or privy seal; 6. by counterfeiting the king's money, or importing counterfeit money; 7. by killing the chancellor, treasurer, or king's justices, in the execution of their offices. [And this statute of Edward III. has been somewhat extended, and rendered more efficient as to the first, third, and fourth species of treason above mentioned, by stat. 36 Geo. III. c. 7; and stat. 57 Geo. III. c. 6.]

IV.

High treasons, created by subsequent statutes, are such as relate, 1. to papists: as, the repeated defence of the pope's jurisdiction; the coming from beyond sea of a natural born popish priest; the renouncing of allegiance, and reconciliation to the pope, or other foreign power; 2. to the coinage, or other signatures of the king: as, counterfeiting (or, importing and uttering counterfeit) foreign coin, here current; forging the sign manual, privy signet, or privy seal; falsifying, &c. the current coin; 3. to the protestant succession: as, corresponding with,

or remitting money to, the Pretender or his sons; endeavouring to impede the succession; writing or printing in defence of the Pretender's title, or in derogation of the act of settlement, or of the power of parliament to limit the descent of the crown. [These laws relative to the Pretender, are, however, in effect obsolete; the Pretender and his sons being long since dead.]

The punishment of high treason, in males, is generally to be, 1. drawn; 2. hanged; 3. embowelled alive; 4. beheaded; 5. quartered; 6. the head and quarters to be at the king's disposal: but, in treasons relating to the coin, only to be drawn, and hanged till dead. Females, in both cases, are to be drawn and burned alive. [The punishment of females, however, is now the same as that of males, namely, to be drawn and hanged, &c.]

CHAPTER V.

Of other Crimes affecting the King and Government.

I.

FELONY is that offence which occasions the total forfeiture of lands or goods at common law, now usually also punishable with death, by hanging, unless through the benefit of clergy.

II.

Felonies, injurious to the king's prerogative, (of which some are within, others without, clergy) are, 1. such as relate to the coin—as the wilful uttering of counterfeit money, &c. (to which head certain other misdemeanors may be also referred); 2. conspiring or attempting to kill a privy counsellor; 3. serving foreign states, or enlisting soldiers for foreign service; 4. embezzling the king's armour or stores.

III.

Præmunire, in its original sense, is the offence of adhering to the temporal power of the pope in derogation of the regal authority; penalty, outlawry, forfeiture, and imprisonment; which hath since been extended to some offences of a different nature.

IV.

Other misprisions and contempts are, 1. negative, *viz.* 1. misprision of treason; penalty, forfeiture and imprisonment; 2. misprision of felony; penalty, fine and imprisonment; 3. concealment of treasure trove; penalty, fine and imprisonment: 2. positive, *viz.* 1. mal-administration of public trusts; usual penalties, banishment, fines, imprisonment, disability; 2. contempts against the king's prerogative; penalty, fine and imprisonment; 3. contempts against his person and government; penalty, fine, imprisonment, and infamous corporal punishment; 4. contempts against his title; penalties, fine and imprisonment, or fine

and disability; 5. contempts against his palaces or courts of justice; penalties, fine, imprisonment, corporal punishment, loss of right hand, forfeiture.

CHAPTER VI.

Of Offences against the Commonwealth; and, first, against the public Justice, and the public Peace.

I.

CRIMES especially affecting the commonwealth, are offences, 1. against the public justice; 2. against the public peace; 3. against the public trade; 4. against the public health; 5. against the public œconomy.

II.

Offences against the public justice are, 1. vacating records, and personating others in courts of justice; penalty, judgment of felony, usually without clergy; 2. compelling prisoners to become approvers; penalty, judgment of felony; 3. obstructing the execution of process; 4. escapes; 5. breach of prison; 6. rescue—which four may be either felonies or misdemeanors punishable by fine and imprisonment; 7. returning from transportation; this is felony, without clergy; 8. taking rewards, to help one to

his stolen goods; penalty, the same as the theft; 9. receiving stolen goods; penalty, transportation, fine, and imprisonment; 10. theftbote; 11. barrettry, and suing in a feigned name; 12. maintenance; 13. champerty; penalty, in these four, fine and imprisonment; 14. compounding prosecutions on penal statutes; penalty, fine, [imprisonment,] and disability; 15. conspiracy; penalty, the villenous judgment; 16. perjury, and subornation thereof; penalties, infamy, imprisonment, fine or pillory, and sometimes transportation or bridewell; 17. bribery; penalty, fine and imprisonment; 18. embracery; penalty, infamy, fine, and imprisonment; 19. false verdict; penalty, the judgment in attainit; 20. negligence of public officers, &c. penalty, fine, and forfeiture of the office; 21. oppression of magistrates; 22. extortion of officers; penalty in both, imprisonment, fine, and sometimes forfeiture of the office.

III.

Offences against the public peace, are, 1. riotous assemblies to the number of twelve; 2. appearing armed, or hunting in disguise; 3. threatening by letters; all these are felonies, without clergy; 4. destroying of turnpikes, &c. penalties, whipping, imprisonment, judgment of felony, with and without clergy; 5. affrays; 6. riots, routs, and unlawful assemblies; 7. tumultuous petitioning; 8. forcible entry and detainer; penalty in all four, fine and imprisonment; 9. going unusually armed; penalty, forfeiture of arms, and imprisonment; 10. spreading false news; penalty, fine and imprison-

ment; 11. pretended prophecies; penalties, fine, imprisonment, and forfeiture; 12. challenges; penalty, fine, imprisonment, and sometimes forfeiture; 13. libels; penalty, fine, and corporal punishment.

CHAPTER VII.

Of the remaining Offences against the Commonwealth.

I.

OFFENCES against the public trade, are, 1. owling; penalties, fines, forfeiture, imprisonment, loss of left hand, transportation, judgment of felony; 2. smuggling; penalties, fines, loss of goods, judgment of felony without clergy; 3. fraudulent bankruptcy; penalty, judgment of felony without clergy; 4. usury; penalty, fine and imprisonment; 5. cheating; penalties, fine, imprisonment, tumbrel, or other corporal punishment; 6. forestalling; 7. regrating; 8. engrossing; penalties for all three, loss of goods, fine, imprisonment; 9. monopolies, and combinations to raise the price of commodities; penalties, fines, imprisonment, loss of ear, infamy, and sometimes the pains of *præmunire*; 10. exercising a trade, not having served as apprentice; penalty, fine; 11. transporting, or residing abroad,

of artificers; penalties, fine, imprisonment, forfeiture, incapacity, becoming aliens.

II.

Offences against the public health are, 1. irregularity, in time of the plague, or of quarentine; penalties, whipping, judgment of felony, with and without clergy; 2. selling unwholesome provisions; penalties, amercement, fine, imprisonment, abjuration.

III.

Offences against the public œconomy, or domestic order of the kingdom, are, 1. those relating to clandestine and irregular marriages; penalties, judgment of felony, with and without clergy; 2. bigamy, or, more properly, polygamy; penalty, judgment of felony; 3. idleness, disorder, vagrancy, and incorrigible roguery; penalties, imprisonment, whipping, judgment of felony; 4. common nuisances, 1. in highways, &c.; 2. by offensive trades; 3. by disorderly houses; 4. by cottages; 5. by fireworks; 6. by evesdropping; penalty in all, fine; 7. by common scolding; penalty, the cucking stool: 5. luxury in diet; penalty, uncertain; 6. gaming; penalties, to gentlemen, fines; to others, fine and imprisonment; to cheating gamesters, fine, infamy, and the corporal pains of perjury; 7. destroying the game; penalties, fines, and corporal punishment.

CHAPTER VIII.

Of Crimes against Individuals; and, first, of Homicide.

I.

CRIMES especially affecting individuals, are, 1. against their persons; 2. against their habitations; 3. against their property.

II.

Crimes against the persons of individuals, are, 1. by homicide, or destroying life; 2. by other corporal injuries.

III.

Homicide is, 1. justifiable; 2. excusable; 3. criminal.

IV.

Homicide is justifiable, 1. by necessity, and command of law; 2. by permission of law, 1. for the furtherance of public justice, 2. for prevention of some forcible felony.

V.

Homicide is excusable, 1. *per infortunium*, or by chancemedley; 2. *se defendendo*, or in self-defence; penalty, in both, forfeiture of goods, which, however, is pardoned of course.

VI.

Criminal homicide is the killing of a human creature, without justification or excuse: this is, 1. killing one's self; 2. killing another.

VII.

Killing one's self, or self-murder, is where one deliberately, or by any unlawful malicious act, puts an end to his own life; this is felony, punished by ignominious burial, and forfeiture of goods and chattels.

VIII.

Killing another is, 1. manslaughter; 2. murder.

IX.

Manslaughter is the unlawful killing of another, without malice, express or implied: this is felony, but within clergy, except in the case of stabbing.

X.

Murder is when a person, of sound memory and discretion, unlawfully killeth any reasonable creature, in being, and under the king's peace, with malice aforethought, either express or implied: this is felony, without clergy, punished with speedy death, and hanging in chains, or dissection.

XI.

Petit treason (being an aggravated degree of murder) is where the servant kills his master, the

wife her husband, or the ecclesiastic his superior ; penalty, to be drawn and hanged.

CHAPTER IX.

Of other Crimes, affecting the Person of Individuals.

CRIMES affecting the person of individuals, not amounting to homicide, are, 1. mayhem, and also shooting at another ; penalties, fine, imprisonment, judgment of felony, without clergy ; 2. forcible abduction, and marriage or defilement of an heiress, which is felony ; also stealing, and deflowering or marrying any woman-child under the age of sixteen years ; for which the penalty is imprisonment, fine, and temporary forfeiture of her lands ; 3. rape, and also deflowering a woman-child under the age of ten years ; 4. buggery, with man or beast ; both these are felony, without clergy ; 5. assault ; 6. battery, especially of clergymen ; 7. wounding ; 8. kidnapping, or forcibly stealing away the king's subjects ; penalties, in all four, fine, imprisonment, and other corporal punishment. [By a late statute, if any person shoot at, stab, or cut another, with intent to murder, rob, maim, or disfigure him, he shall be deemed guilty of felony, without benefit of clergy, if the offence be committed under

such circumstances that if death had ensued he would have been guilty of murder, 43 Geo. III. c. 58, s. 1.; also, wilfully administering medicine to procure abortion, is, in some cases, felony without clergy; in others, felony merely, and punishable with imprisonment, &c. or transportation, 43 Geo. III. c. 58, s. 2.

CHAPTER X.

Of Crimes affecting the Habitation and Property of Individuals.

I.

CRIMES affecting the habitation of individuals are,
1. arson; 2. burglary.

II.

Arson is the malicious and wilful burning of the house, outhouses, &c. of another man; this is felony, in some cases within, in others without clergy. [If a man wilfully set fire to his own house, outhouse, &c. with intent to injure or defraud another, it is now made felony without benefit of clergy, by stat. 43 Geo. III. c. 58, s. 1.]

III.

Burglary is the breaking and entering, by night, into a mansion-house, with intent to commit a felony; this is felony without clergy.

IV.

Crimes, affecting the property of individuals are,
1. larciny; 2. malicious mischief; 3. forgery.

V.

Larciny is, 1. simple; 2. mixed, or compound.

VI.

Simple larciny is the felonious taking and carrying away of the personal goods of another: and it is, 1. grand larciny; being above the value of twelve pence; which is felony, in some cases within, in others without clergy; 2. petit larciny, to the value of twelve pence only; which is also felony, but not capital; being punished with whipping, or transportation.

VII.

Mixed, or compound larciny, is that wherein the taking is accompanied with the aggravation of being, 1. from the house, 2. from the person.

VIII.

Larcinies from the house, by day or night, are felonies without clergy, when they are, 1. larcinies, above twelve pence, from a church, or from a dwelling-house, or booth, any person being therein; 2. larcinies, of five shillings, by breaking the house, though no person be therein; 3. larcinies, of forty shillings, from the house, without breaking, and though no person be therein; 4. larcinies, of five shillings, from a shop, &c. whether broken or not, and though no person be therein.

IX.

Larciny from the person is, 1. by privately stealing from the person of another, above the value of twelve pence ; 2. by robbery ; or the felonious and forcible taking from the person of another, in or near the highway, goods or money of any value, by putting him in fear : these are both felonies without clergy. An attempt to rob is also felony.

X.

Malicious mischief, by destroying dikes, goods, cattle, ships, garments, fish-ponds, trees, sea or river banks, hop-binds, or coal-mines, is felony ; and, in most cases, without clergy.

XI.

Forgery is the fraudulent making or alteration of a writing, in prejudice of another's right ; penalties, fine, imprisonment, loss of nose and ears, forfeiture, judgment of felony, without clergy.

CHAPTER XI.

Of the Means of Prevention, and the Courts instituted for the Punishment, of Crimes and Misdemeanors.

I.

CRIMES and misdemeanors may be prevented, by compelling suspected persons to give security ; which is effected by binding them in a conditional recogni-

zance to the king, taken in court, or by a magistrate.

II.

These recognizances may be conditioned, 1. to keep the peace ; 2. to be of good behaviour.

III.

In the method of punishment may be considered, 1. the several courts of criminal jurisdiction ; 2. the several proceedings therein.

IV.

The criminal courts are, 1. those of a public and general jurisdiction throughout the realm ; 2. those of a private and special jurisdiction.

V.

Public courts are, 1. the high court of parliament, which proceeds by impeachment ; 2. the court of the lord high steward ; 3. the court of king's bench ; 4. the court of chivalry [now disused] ; 5. the court of admiralty, under the king's commission ; 6. the courts of oyer and terminer, and general goal-delivery ; 7. the court of quarter-sessions ; 8. the sheriff's tourn ; 9. the court leet [now fallen into disuse] ; 10. the court of the coroner ; 11. the court of the clerk of the market.

VI.

Private courts are, 1. the court of the lord steward, &c. by statute of Henry VII. ; 2. the court of the lord steward, &c. by statute of Henry VIII. ; 3. the university courts.

CHAPTER XII.

Of summary Convictions, and the first Stages of regular Prosecutions.

I.

PROCEEDINGS in criminal courts are, 1. summary ; 2. regular.

II.

Summary proceedings are such, whereby a man may be convicted of divers offences, without any formal process or jury, at the discretion of the judge or judges appointed by act of parliament.

III.

Regular proceedings, in the courts of common law, are, 1. arrest ; 2. commitment and bail ; 3. prosecution ; 4. process ; 5. arraignment, and its incidents ; 6. plea and issue ; 7. trial and conviction ; 8. clērgy ; 9. judgment, and its consequences ; 10. avoider of judgment ; 11. execution.

IV.

An arrest is the apprehending or restraining of one's person, in order to be forthcoming to answer a crime, with which one is charged or suspected.

V.

This may be done, 1. by warrant ; 2. by an offi-

cer, without warrant ; 3. by a private person, without warrant ; 4. by hue and cry.

VI.

Commitment is the confinement of one's person in prison for safe custody, by warrant from proper authority, unless, in bailable offences, he puts in sufficient bail, or security for his future appearance.

VII.

Prosecution, or the manner of accusing offenders, is either by a previous finding of a grand jury, as, 1. by presentment ; 2. by indictment : or, without such finding, 3. by information ; 4. by appeal.

VIII.

A presentment is the notice taken by a grand jury of any offence, from their own knowledge or observation.

IX.

An indictment is a written accusation of one or more persons of a crime or misdemeanour, preferred to, and presented on oath by, a grand jury ; expressing, with sufficient certainty, the person, time, place, and offence.

X.

An information is, 1. at the suit of the king and a subject, upon penal statutes ; 2. at the suit of the king only : both differing from indictments principally in this ; that they are exhibited by the in-

former, or the king's officer, and not on the oath of a grand jury.

XI.

An appeal is an accusation, brought by one private subject against another, of larciny, rape, mayhem, arson, or homicide ; which the king cannot discharge or pardon. [The proceeding by appeal, however, is now abolished, by stat. 59 Geo. III. c. 46. s. 1.]

CHAPTER XIII.*Of Process, Arraignment, Plea, and Issue.*

I.

PROCESS to bring in an offender, when indicted in his absence, is, in misdemeanors, by *venire facias*, distress infinite, and *capias*; in capital crimes, by *capias* only; and, in both, by outlawry.

II.

Arraignment is the calling of the prisoner to the bar of the court, to answer the matter of the indictment.

III.

Incident hereunto are, 1. the standing mute of the prisoner; for which, in petit treason, and felonies of death, he shall undergo the *peine fort et dure*.

[In high treason, petit larciny, and misdemesnors, standing mute was always holden to be a confession of the offence, and equivalent to a conviction by verdict : and the law has since been made the same in the case of felony and piracy, by stat. 12 Geo. III. c. 20] ; 2. his confession ; which is either simple, or by way of approvement.

IV.

The plea, or defensive matter alleged by the prisoner, is, 1. a plea to the jurisdiction ; 2. a demurrer in point of law ; 3. a plea in abatement ; 4. a special plea in bar ; which is, 1. *auterfoits acquit* ; 2. *auterfoits convict* ; 3. *auterfoits attain* ; 4. a pardon : 5. the general issue—not guilty.

V.

Hereupon issue is joined by the clerk of the arraigns, on behalf of the king.

 CHAPTER XIV.

Of Trial, Conviction, and Clergy.

I.

TRIALS of offences, by the laws of England, were and are, 1. by the corsned ; 2. by ordeal of either fire or water ; both which have been long abolished ; 3. by battel, in appeals and approvements

[also abolished] ; 4. by the peers of Great-Britain ; 5. by jury.

II.

The method and process of trial by jury is, 1. the impanelling of the jury ; 2. challenges ; 1. for cause ; 2. peremptory : 3. *tales de circumstantibus* ; 4. the oath of the jury ; 5. the evidence ; 6. the verdict, either general or special.

III.

Conviction is when the prisoner pleads, or is found, guilty : whereupon, in felonies, the prosecutor is intitled to, 1. his expenses ; 2. restitution of his goods.

IV.

Clergy, or the benefit thereof, was originally derived from the usurped jurisdiction of the popish ecclesiastics ; but hath since been new modelled by several statutes.

V.

It is an exemption of the clergy from any other secular punishment for felony, than imprisonment for a year, at the court's discretion ; and it is extended likewise, absolutely, to lay peers, for the first offence ; and to all lay commoners, for the first offence also, upon condition of branding, imprisonment, or transportation.

VI.

Divers felonies are ousted of clergy by particular statutes.

VII.

Felons, on receiving the benefit of clergy, (though they forfeit their goods to the crown) are discharged of all clergyable felonies before committed, and restored in all capacities and credits.

CHAPTER XV.

Of Judgment, Avoider thereof, and Execution.

I.

JUDGMENT (unless any matter be offered in arrest thereof) follows upon conviction; being the pronouncing of that punishment which is expressly ordained by law.

II.

Attainder of a criminal is the immediate consequence, 1. of having judgment of death pronounced upon him; 2. of outlawry for a capital offence.

III.

The consequences of attainder are, 1. forfeiture to the king; 2. corruption of blood.

IV.

Forfeiture to the king is, 1. of real estates, upon attainder;—in high treason, absolutely, till the death of the pretender, and his sons;—in felonies,

for the king's year, day, and waste ; 2. of personal estates, upon conviction ; in all treason, misprision of treason, felony, excusable homicide, standing mute upon arraignment, atrocious contempts of the king's courts, and flight.

V.

Corruption of blood is an utter extinction of all inheritable quality therein : so that, after the king's forfeiture is first satisfied, the criminal's lands escheat to the lord of the fee ; and he can never afterwards inherit, be inherited, or have any inheritance derived through him.

VI.

Judgments, and their consequences, may be avoided, 1. by falsifying or reversing the attainder ; 2. by reprieve, or pardon.

VII.

Attainders may be falsified or reversed, 1. without a writ of error ; either for faults in the record, or for matter *dehors* the record ; 2. by writ of error, for mistakes in the judgment ; 3. by act of parliament, for favour.

VIII.

A reprieve is a temporary suspension of the judgment, 1. *ex arbitrio judicis* ; 2. *ex necessitate legis*, for pregnancy, insanity, or the trial of identity of person.

IX.

A pardon is a permanent avoider of the judgment

by the king's majesty, in offences against his crown and dignity; drawn in due form of law, allowed in open court, and thereby making the offender a new man.

X.

Execution is the completion of human punishment, and must be strictly performed in the manner which the law directs.

THE END.





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